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Finance Sub-Committee

Agenda

Date:	**Wednesday, 7th September, 2022**
Time:	**2.00 pm**
Venue:	**Committee Suite 1, 2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ**

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the top of each report.

It should be noted that Part 1 items of Cheshire East Council decision making meetings are audio recorded and the recordings will be uploaded to the Council's website

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

   To note any apologies for absence from Members.

2. **Declarations of Interest**

   To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking/Open Session**

   In accordance with paragraph 2.24 of the Committee Procedure Rules and Appendix on Public Speaking, set out in the Constitution, a total period of 15 minutes is allocated for members of the public to put questions to the Sub-Committee on any matter relating to this agenda. Each member of the public will be allowed up to two minutes to speak; the Chair will have discretion to vary this where they consider it appropriate.

   Members of the public wishing to speak are required to provide notice of this at least three clear working days in advance of the meeting.

4. **Minutes of Previous Meeting** (Pages 3 - 24)

   To approve as a correct record the minutes of the meeting held on 6th July 2022.

Contact: Paul Mountford, Democratic Services
Tel: 01270 686472
E-Mail: paul.mountford@cheshireeast.gov.uk

5. **Review the Medium-Term Financial Strategy Reserve** (Pages 25 - 42)

To consider a report on the use of the Medium-Term Financial Strategy (MTFS) reserve to date and its forecast use within the MTFS 2022 to 2026.

6. **Work Programme** (Pages 43 - 48)

To consider the Work Programme and determine any required amendments.

7. **Procurement Pipeline** (Pages 49 - 64)

To receive an update report on the procurement pipeline for the Council, the contracts awarded since April 2022 and procurement activity.

8. **Commencement ASDV Governance Review** (Pages 65 - 282)

To consider a report which proposes immediate changes to the Council's current arrangements for reporting and risk management of the wholly-owned companies.

9. **Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

10. **Commencement ASDV Governance Review** (Pages 283 - 286)

To consider Appendix 4 of the report.

11. **Procurement Pipeline** (Pages 287 - 320)

To receive details of the waivers referred to in the Procurement Pipeline report.

Membership: Councillors D Brown, S Carter (Vice-Chair), J Clowes, S Gardiner, N Mannion, B Puddicombe, A Stott (Chair) and M Warren

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Finance Sub-Committee**
held on Wednesday, 6th July, 2022 in Committee Suite 1, 2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Stott (Chair)
Councillor S Carter (Vice-Chair)

Councillors C Browne (for Cllr Warren), J Clowes, S Gardiner, N Mannion and B Puddicombe

OFFICERS
Alex Thompson, Director of Finance and Customer Services
David Brown, Director of Governance and Compliance
Deborah Nickson, Legal Team Manager (People)
Lianne Halliday, Senior Manager – Procurement
Paul Mountford, Democratic Services

APOLOGIES
Councillors D Brown and M Warren

The Chair announced that Councillor Mark Goldsmith had ceased to be a member of the Sub-Committee owing to his recent appointment as a Director of Orbitas. Councillor Mick Warren had been appointed in his place but had been unable to attend this meeting.

12 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

13 **PUBLIC SPEAKING/OPEN SESSION**

There were no public speakers.

14 **MINUTES OF PREVIOUS MEETING**

RESOLVED

That the minutes of the meeting held on 1st June 2022 be approved as a correct record.

15 **PROVISIONAL FINANCIAL OUTTURN 2021/22**

The Sub-Committee considered a report providing the pre-audited overview of the Cheshire East Council outturn for the financial year 2021/22. The report also proposed treatment of year-end balances that reflected risks identified in the Medium-Term Financial Strategy approved by Council in February 2022.

The report included a narrative from the Council's Draft Group Accounts, to highlight financial performance within the year, as well as associated appendices to show how the Council had achieved against the priorities contained within the Corporate Plan as well as other important financial matters.

The Chair placed on record her thanks and appreciation to the Director of Finance and Customer Services and the Finance Team for their work in producing the outturn report.

Members commented as follows in relation to the report:

- There was concern that whilst the Council's finances were being managed in an efficient and transparent way, there were numerous projects within the capital programme that were not proceeding as planned. The Director of Finance and Customer Services advised that, owing to the upheaval of the pandemic and subsequent movements within the labour market, both the Council and its contractors were facing capacity issues at the present time, as had been highlighted previously. There was also a need to reprofile planned projects in view of the current high rate of inflation. Each service committee would be asked to review its programmes and priorities with a view to officers updating committees in the September/October cycle. On the specific question of staff recruitment and retention, the Director undertook to take the matter away for further consideration and report back both to this and other service committees.
- Whilst the proposed increase in the level of General Reserves was welcomed, members asked if there was a benchmark to which councils should work based on a specific number of days' operating costs, as happened in certain other sectors. The Director of Finance and Customer Services responded that there had never been a benchmark for councils in relation to reserves but that the Corporate Plan had set a target of £20M for General Reserves. He undertook to ascertain how the Council was benchmarking against neighbouring and comparator authorities and report back.

RESOLVED (unanimously)

That the Sub-Committee

1. notes the overall financial performance of the Council in the 2021/22 financial year, as contained within the report, as follows:

   (a) a Net Revenue Underspend of £1.1m against a revised budget of £297.4m (0.4%);

   (b) an increase in General Reserves from £11.5m to £12.6m (further recommendation at 3.5.3); and

(c) Capital Spending of £84.5m against an approved programme of £144.9m (58.4%);

2. notes the contents of each of the following appendices:

   Appendix 1 – Narrative from the Draft Group Accounts – providing context of the area and its people, commentary on performance and introduces the financial statements of the Council and the wider Group of Companies for the period 1 April 2021 to 31 March 2022;

   Appendix 2 – Grants and Requests for Supplementary Revenue Estimates – including details of revenue grants received during 2021/22 and providing supplementary revenue requests relating to grants received in addition to existing budget;

   Appendix 3 - Debt Management – providing a debt summary by directorate;

   Appendix 4 – Capital Outturn and Requests for Supplementary Capital Estimates and Virements – including an update on the capital programme and details requests for supplementary capital estimates and virements;

   Appendix 5 – Reserves Strategy – which details the reserve outturn position;

   Appendix 6 – Treasury Management Strategy – year-end Treasury Management report including an economic outlook, borrowing and investing strategies and treasury management indicators; and

   Appendix 7 – Investment Strategy – providing details about different types of investments that the Council holds;

3. approves supplementary revenue estimates up to and including £1,000,000 in accordance with Financial Procedure Rules as detailed in Appendix 2, Table 1;

4. approves supplementary capital estimates up to and including £1,000,000 and Capital Virements up to and including £5,000,000 in accordance with Financial Procedure Rules as detailed in Appendix 4, Annex C; and

5. recommends to Council approval of:

   (a) fully-funded supplementary revenue estimates over £1,000,000 in accordance with Financial Procedure Rules as detailed in Appendix 2, Table 1; and

(b) the virement of £2.3m in 2022/23 from the Medium-Term Financial Strategy Reserve to the General Reserve as detailed in Appendix 5, paragraph 4.

16 **UK SHARED PROSPERITY FUND - CHESHIRE EAST ALLOCATION**

The Sub-Committee received an oral report from the Director of Finance and Customer Services in relation to the UK Shared Prosperity Fund and the funding allocation to Cheshire East Council.

The matter was due to be considered by the Corporate Policy Committee on 14th July 2022 and the report to that Committee had been circulated to members of the Finance Sub-Committee for information. The report sought recommendations to Council on 20th July 2022 to provide delegated authorities to approve a UK Shared Prosperity Fund Investment Plan for 2022-25 for submission to Government, accept the Cheshire East allocation of up to £13,121,309 and approve any amendments to the Investment Plan as required to deliver the programme.

Members commented as follows in relation to the report:

- In noting the proposed delegations to officers, members expressed the wish to see details of the projects that came forward under the scheme.
- Members asked if there was a specific scoring mechanism for determining the allocation of funds. The Director of Finance and Customer Services undertook to pursue this with a view to officers providing further details at the Corporate Policy Committee meeting.
- There was a need to ensure that the officer team set up to administer the scheme was properly resourced.
- Members asked how the funding allocation to the Council compared with the funding the Council received previously under the European Social Fund. The Director of Finance and Customer Services undertook to provide a written response to members of the Sub-Committee.
- In devising projects under the Fund, consideration needed to be given to issues such as rural deprivation which was significant in scale but widely dispersed geographically.

RESOLVED

That the report be noted.

17 **WORK PROGRAMME**

The Sub-Committee considered its work programme for 2022/23.

In noting that there were currently only two items on the work programme for September, the Director of Finance and Customer Services advised that it may be possible to bring forward the following currently unscheduled reports to the September meeting:

Review of the Impact of Public Interest Reports
Review of the Medium Term Financial Strategy Reserve

Members commented as follows in relation to the report:

- It was hoped that the unscheduled item on S.106 / CIL Oversight would be brought forward at the earliest opportunity.
- It was suggested that a progress report/update on the UK Shared Prosperity Fund be brought to a future meeting. The Director of Finance and Customer Services advised that this could form part of a comprehensive report on The Grants Register and could be scheduled for September or the following cycle.

RESOLVED (unanimously)

That subject to the proposed amendments and additional items discussed at the meeting, the work programme be noted.

18 **PROCUREMENT PIPELINE**

The Sub-Committee considered an update report on the procurement pipeline for the Council, the contracts awarded since April 2022 and procurement activity.

The Sub-Committee had requested the establishment of a Procurement Working Group to review several completed procurements and report back to the Sub-Committee. To ensure that the Procurement Working Group was provided with sufficient scope and guidance, the Sub-Committee was asked to confirm formal terms of reference as set out in the report.

Members commented as follows in relation to the report:

- It was hoped that there would be a significant reduction in the numbers of waivers in the future in line with pre-pandemic levels.
- Members again asked if there were any implications for the procurement process arising from the Procurement Bill which was currently before Parliament. Officers advised that it was too early to say at this stage but the progress of the Bill was being closely monitored.

RESOLVED (unanimously)

That the Sub-Committee

1. notes the procurement pipeline of activity in Appendix 1 to the report;

2. approves the 3 new pipeline projects in Appendix 1 as business as usual;

3. notes the contracts awarded by the Council since April 2022 in Appendix 2;

4. approves the Terms of Reference for the Procurement Working Group as set out in Appendix 3, subject to the Group normally consisting of 5 members, including 3 elected members drawn from the Finance Sub-Committee;

5. appoints the following members of the Finance Sub-Committee to the Procurement Working Group:

   Councillor S Carter
   Councillor J Clowes
   Councillor N Mannion

6. notes the reason for 11 waivers approved between 1st February 2022 and 31st May 2022 (37 in total in 2021/22, 6 in total in 2022/23).

19 **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED

That the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

20 **PROCUREMENT PIPELINE**

The Sub-Committee considered details of the waivers referred to in the Procurement Pipeline report.

RESOLVED

That the details of individual waivers be noted.

21 **WHOLLY-OWNED COMPANIES MATTERS**

The Sub-Committee received an oral update from the Director of Governance and Compliance on a number of issues relating to the Council's wholly-owned companies.

RESOLVED

That the update be noted.

The meeting commenced at 2.00 pm and concluded at 3.45 pm

Councillor A Stott (Chair)

Abbreviations

Term	Meaning
ASC	Adult Social Care
ASDV	Alternative Service Delivery Vehicles – part of the Council's commissioning approach to funding services
BCF	Better Care Fund
BRRS	Business Rates Retention Scheme – the system of local authority funding introduced on 1st April 2013
CAG	Corporate Assurance Group
CDRP	Crime and Disorder Reduction Partnership
CEC	Cheshire East Council
CEFS	Cheshire East Family Support
CERF	Cheshire East Residents First
CFB	Capital Financing Budget
CFR	Capital Financing Requirement
CIPFA	Chartered Institute of Public Finance and Accountancy
CPI	Consumer Price Index
CSC	Children's Social Care
CTS	Council Tax Support
DfE	Department for Education
DSG	Dedicated Schools Grant – grant received from Government to fund schools
EqIA	Equality Impact Assessment
EIP	Early Intervention and Prevention
ERP	Enterprise Resource Platform
ESG	Education Support Grant
FQR	First Quarter Review (not produced for 2020/21)
FTE	Full Time Equivalent
GP	General Practitioner

Term	Meaning
GVA	Gross Value Added
HLBC	High Level Business Case
HM	Her Majesty's
HR	Human Resources – one of the Council's corporate service areas
ICT	Information and Communication Technology – the service responsible for computers, networks, software, phones, etc.
LA	Local Authority
LED	Light Emitting Diode
LGA	Local Government Association
LOBO	Lenders Option Borrows Option
LSCB	Local Safeguarding Children's Board
MARS	Mutually Agreed Resignation Scheme
MHCLG	Ministry of Housing, Communities and Local Government (formerly Department for Communities and Local Government – DCLG)
MRP	Minimum Revenue Provision
MTFS	Medium Term Financial Strategy
MYR	Mid-Year Review
NEETs	Not in Education, Employment or Training
NFF	National Funding Formula
NHB	New Homes Bonus Grant
NHS	National Health Service
NJC	National Joint Council
NNDR	National Non-Domestic Rates – the contribution to general local authority costs by businesses. The rate is set by central Government
PHE	Public Health England
PiP	Partners in Practice
PWLB	Public Works Loan Board – a Government agency providing loans to public bodies for capital works
RPI	Retail Price Index
RSG	Revenue Support Grant
S151	Section 151 (Officer)
SAGC	Skills and Growth Company

Term	Meaning
SBRR	Small Business Rate Relief
SCIES	Safeguarding Children in Education Settings
SEN	Special Educational Needs
SEND	Special Educational Needs and Disabilities
SLA	Service Level Agreement
SLE	Separate Legal Entity – a delivery model for delivering services in a different way
SOS	Signs of Safety
SSB	Supporting Small Business
TC	Town Centre
TQR	Third Quarter Review
TUPE	Transfer of Undertakings (Protection of Employment) regulations
VIC	Visitor Information Centres

Glossary of Terms

Accounting Period

The period of time covered by the accounts which, for local authorities, is the twelve months commencing 1st April. The 31st March is the end of the accounting period and the balance sheet date.

Accruals

The concept that income and expenditure are recognised as they are earned or incurred, not as cash is received or paid.

Agency Services

These are services provided by the Council to a third party on behalf of another organisation.

Appropriations

Amounts transferred between the Comprehensive Income and Expenditure Statement and revenue or capital reserves.

Asset Valuation

The Council's property, plant and equipment are valued in the balance sheet using the following measurement bases:

- Infrastructure, community assets, assets under construction – depreciated historical cost
- Dwellings – current value, determined using the basis of existing use value (EUV)
- Surplus assets – fair value
- All other assets – current value, determined as the amount that would be paid for the asset in its existing use (existing use value or EUV).

Assets Held for Sale

An asset is deemed as 'held for sale' if it meets the following criteria:

- the asset must be available for immediate sale in its present condition subject to terms that are usual and customary for sales of such assets;
- the sale must be highly probable, the appropriate level of management must be committed to a plan to sell the asset and an active programme to locate a buyer and complete the plan must have been initiated; and
- the asset must be actively marketed for a sale at a price that is reasonable in relation to the current value.

Associate Companies

This is an entity other than a subsidiary or joint venture in which the Council has a participating interest and over who's operating and financial policies the Council is able to exercise significant influence.

Balance Sheet

This statement shows the true and fair value of the assets and liabilities recognised by the Council at the balance sheet date (31st March). The net assets of the Council are matched by the reserves held. The following terms are used within the balance sheet:

- **Assets:** Items of worth that are measurable in terms of value. Long term (non-current) assets yield benefit to the Council for a period of more than one year, whereas current assets are cash and items which can be readily converted into cash.
- **Liabilities**: Amounts due to individuals or organisations. Current liabilities are usually payable within one year of the balance sheet date, whereas long term (non-current) liabilities will not become payable for over one year.
- **Net Assets**: The total value of the Council's assets less total liabilities.
- **Reserves**: These are either usable or unusable, see entry for Reserves.

Budget

A statement of the Council's planned service provision, income and expenditure in respect of the financial year.

Capital Transactions (excluding reserves)

- **Capital Assets**: See Property, Plant and Equipment.
- **Capital Expenditure**: Expenditure on the acquisition of an item of Property, Plant or Equipment, or expenditure that extends the useful life or operational capability of an existing asset.
- **Capital Financing**: The means by which capital expenditure incurred by the Council is funded. Usually such funding comprises grants, contributions from third parties, receipts from the sale of assets, contributions from Council reserves and borrowing.
- **Capital Programme**: The planned capital schemes the Council intends to carry out over a specified period of time.
- **Capital Receipts**: Proceeds received from the sale of capital assets. The proceeds are set aside in the Capital Reserve in order to repay the Council's borrowings or to finance new capital expenditure.
- **Capitalisation**: The classification of expenditure as capital rather than revenue, subject to the condition that the expenditure yields a benefit to the Council for a period of more than one year.
- **Revenue Expenditure Funded from Capital Resources under Statute (known as REFCUS)**: Expenditure incurred that may be capitalised although it does not create a non-current asset.

Cash and Cash Equivalents

This comprises cash in hand, cash overdrawn and short term investments that are readily convertible into known amounts of cash.

Cash Flow Statement

The Cash Flow Statement shows the changes in cash and cash equivalents of the Council during the reporting period. The Statement shows how the Council generates and uses cash and cash equivalents by classifying cash flows as operating, investing and financing activities. The amount of net cash flows arising from operating activities is a key indicator of the extent to which the operations of the Council are funded by way of taxation and grant income or from the recipients of services provided by the Council. Investing activities represent the extent to which cash out flows have been made for resources which are intended to contribute to the Council's future service delivery. Cash flows arising from financing activities are useful in predicting claims on future cash flows by providers of capital (i.e. borrowing) to the Council.

CIPFA

The Chartered Institute of Public Finance and Accountancy is the accountancy body which recommends accounting practice for the preparation of local authority accounts.

Collection Fund

This is a statutory fund kept separate from the main accounts of the Council and provides details of Council Tax and Non-Domestic Rate transactions of precepting authorities. As a billing authority the Council will share the risks and rewards that the amount of Council Tax and Non-Domestic Rates collected could be greater or less than that anticipated.

Collection Fund terms include the following:

- **Billing Authority**: Cheshire East Council is classed as a billing authority as it has responsibility for collecting Council Tax and Non-Domestic Rates. It collects Council Tax on behalf of Cheshire Police and Crime Commissioner, Cheshire Fire Authority and Parish Councils (also known as precepting authorities) and collects Non-Domestic Rates on behalf of Central Government and Cheshire Fire Authority.
- **Council Tax**: The means of raising money locally to fund local Council services. This is a property-based tax where the amount levied depends on the valuation of each dwelling.
- **Non-Domestic Rates (NDR)**: Also known as business rates, NDR is collected from businesses in the Council's geographic area. The rates are set nationally by the Government.
- **Precept**: The amount the Council is required to raise in Council Tax on behalf of other local authorities, for example Cheshire Police and Crime Commissioner.

Comprehensive Income and Expenditure Statement (CIES)

The CIES sets out the income and expenditure for the all the Council's functions for the financial year, according to the CIPFA Service Reporting Code of Practice (SeRCOP).

The CIES has two sections:

- **Surplus or Deficit on the provision of Services** – the increase or decrease in the net assets of the Authority as a result of incurring expenses and generating income.
- **Other Comprehensive Income and Expenditure** – shows any changes in net assets which have not been reflected in the Surplus or Deficit on the provision of Services. Examples include the increase or decrease in net assets of the Authority as a result of movements in the fair value of its assets and actuarial gains or losses on pension assets and liabilities.

Consistency

The principle that the same accounting treatments are used from year to year so that useful comparisons can be made. Any significant change in policies must be declared in the accounting statements.

Constitution

The fundamental principles by which the Council operates and is governed.

Contingencies

Sums set aside to meet either the potential costs of activities expected to occur during the year, over and above those costs included in the services budgets, or items which are difficult to predict in terms of financial impact or timing.

Contingent Assets

A contingent asset is a possible asset that arises from past events and whose existence will be confirmed only by the occurrence of one or more uncertain future events not wholly within the entity's control.

Contingent Liabilities

A contingent liability is either:

- a possible obligation arising from past events whose existence will be confirmed only by the occurrence of one or more uncertain events not wholly with the Council's control; or
- a present obligation arising from past events where it is probable that a transfer of economic benefits will be required, but the amount cannot be measured with sufficient reliability.

Creditors

These are financial liabilities arising from the contractual obligation to pay cash in the future for goods or services or other benefits that have been received or supplied and have been invoiced or formally agreed with the supplier.

Debtors

Debtors (or income due from third parties) are recognised in the balance sheet as an asset. The income is recognised at the point at which a service or good is provided; a debtor is raised for the cash or cash equivalent amount i.e. contract value.

Where there is a risk that a debtor cannot be recovered at its initial contract value, the asset will be reduced to the amount at which it can be recovered in the balance sheet. This is accounted for in a provision for impairment (bad debt) and included in the Comprehensive Income and Expenditure Account in the Surplus or Deficit on the Provision of Services.

Deficit

Arises when expenditure exceeds income or when expenditure exceeds available budget.

Delegated Budgets

Budgets for which schools and other services have complete autonomy in spending decisions.

Depreciation

Depreciation is a measurement of consumption of the service potential inherent in an item of property, plant or equipment and is recognised in the cost of services.

Exceptional Items

Items that derive from the ordinary activities of the Council and are material in terms of the Council's overall expenditure and not expected to recur frequently or regularly.

Financial Instruments

A financial instrument is any contract which gives rise to a financial asset for one party and a financial liability or equity instrument for the other. Terms relating to Financial Instruments include:

- **Amortised cost**: the amount at which the asset or liability is measured at initial recognition (usually 'cost'), minus any repayments of principal, minus any reduction for impairment or uncollectibility, plus or minus the cumulative amortisation of the difference between that initial amount and the maturity amount.
- **Effective rate of interest**: the rate of interest that is used to calculate the value today of any future investment.
- **Equity instrument**: A contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities (such as equity share in a company) – this will only apply to investments in other entities held by the Council.
- **Fair value**: The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction.
- **Financial asset and derivatives**: A right to future economic benefits controlled by the Council that is represented by:
  - cash;
  - an equity instrument of another entity;
  - a contractual right to receive cash (or another financial asset) from another entity; or
  - a contractual right to exchange financial assets or liabilities with another entity under conditions that are potentially favourable to the Council.
- **Financial liability**: An obligation to transfer economic benefits controlled by the Council that is represented by; a contractual obligation to deliver cash (or another financial asset) to another entity / a contractual obligation to exchange financial assets or liabilities with another entity under conditions that are potentially unfavourable to the Council.
- **Market value**: The monetary value of an asset as determined by current market conditions at the balance sheet date.
- **Soft loans**: The Council may sometimes make loans that are interest free or at less than market rates, where a service objective would justify the Council making a concession. Examples include:
  - Loans to lower tier authorities and voluntary organisations to aid service provision;
  - Local businesses to encourage economic development;
  - Employees as part of a relocation package.

Government Grants

These are amounts received from Central Government towards funding the Council's activities. These represent a significant amount of Council income.

Grants and Contributions

Grants and contributions are defined as assistance in the form of transfers of resources to the Council in return for past or future compliance with certain conditions relating to the operation of activities. Most grants have stipulations as to how they are spent and consequences if resources are not applied in the manner authorised. There are a number of terms used to explain these:

- **Conditions**: specify what future economic benefits or service delivery/potential need to be achieved to avoid having to return funding or assets.
- **Restrictions**: limit what the funding / assets can be used for.
- **Stipulations**: where laws or other binding arrangements form part of the agreement between the grantor and the grantee.

Heritage Assets

Assets which are preserved in trust for future generations, or which are held for their contribution to knowledge and culture.

Impairment

Relates to a reduction in book value of either a physical or financial asset, for example:

- A reduction in the book value of an item of property, plant or equipment arising from physical damage to the asset, dilapidation or obsolescence; or
- A reduction in the book value of a financial asset for which the carrying value exceeds the estimated recoverable amount. Bad and doubtful debt falls into this category.

Income

Amounts which the Council receives, or expects to receive, from any source. Income includes Council Tax, Non-Domestic Rates, Revenue Support Grant and other Government grants, fees, charges, sales and capital receipts.

Intangible Assets

Expenditure incurred on those assets that do not have physical substance but which are separately identifiable and provide the Council with a right of use for a period in excess of one year.

International Financial Reporting Interpretations Committee

The IFRS Interpretations Committee is the interpretative body of the IFRS Foundation. Its mandate is to review on a timely basis widespread accounting issues that have arisen within the context of current International Financial Reporting Standards (IFRSs).

International Financial Reporting Standards

A set of international accounting standards which state how particular types of transactions and other events should be reported in financial statements. IFRS are issued by the International Accounting Standards Board.

Inventories

These assets are valued at the lower of cost and net realisable value. Inventories include:

- Materials or supplies to be consumed in the provision of services (e.g. road salt, transport fuel);
- Stocks held for sale or distribution (e.g. publications, leaflets).

Valuation Definitions:

- **Average Cost**: Where goods such as stocks may be purchased at different times and at different prices, an average cost is calculated to give a value to goods held at the balance sheet date.
- **Cost**: Purchase price, costs of conversion and other costs in bringing the inventories to their present location and condition.
- **Net Realisable Value**: the estimated selling price of an asset after all the costs attributed to bringing an asset to a point at which it can be sold, have been deducted.
- **Work in Progress**: The value of rechargeable work which has not been recharged at the end of the financial year.

Investment Properties

Assets which are held with a view to providing income, capital appreciation or both. Examples of investment properties are:

- Land held for long term capital appreciation;
- A building held under a finance lease and rented out;
- A property under construction or development / redevelopment for future use as an investment property.

Investments

Short-term investments comprise deposits of temporary surplus funds with banks or similar institutions. Long term investments comprise similar funds held for a period of more than one year.

Joint Venture

A Joint Venture is an arrangement under which two or more parties have contractually agreed to share control, such that decisions about the activities of the arrangement are given unanimous consent from all parties.

Leasing

A method of acquiring the use of a non-current asset by paying a rental for a specified period of time, rather than purchasing it outright. There are two categories for leasing:

- **Finance Lease**: An arrangement whereby the owner of an asset (the lessor) accepts a rental in return for allowing another party (the lessee) use of an asset for a specified period, such that substantially all of the risks and rewards associated with ownership are transferred to the lessee.
- **Operating Lease**: An arrangement similar to a finance lease but where the risks and rewards associated with ownership remain with the lessor.

Loans and Receivables

These are defined as financial assets (excluding derivatives) that have fixed or determinate payments and that are not quoted in an active market, other than those that the Council intends to sell immediately or in the near term and are classified as held for trading.

Long Term Borrowing

The main element of long term borrowing comprises loans that have been raised to finance capital expenditure projects.

Materiality

Materiality relates to the significance of transactions, balances and errors contained in the financial statements. Information is material if omitting it or misstating it could influence decisions that users make on the basis of financial information about the Council.

Minimum Revenue Provision (MRP)

The minimum amount (as laid down in statute) that the Council must charge to the accounts each year in order to meet the costs of repaying amounts borrowed.

Movement in Reserves Statement (MiRS)

The MiRS shows the movement in the year on the different reserves held by the Authority, analysed into 'usable' reserves (i.e. those that can be applied to fund expenditure or reduce local taxation) and other 'unusable' reserves.

Non-Distributed Costs

Costs which cannot be specifically applied to a service or services and are held centrally, comprising certain pension costs and the costs of unused shares of IT facilities and other assets.

Pensions

There are a number of terms used when accounting for pension costs:

- **Actuarial Assumptions**: Assumptions made by the Pension Fund Actuary in valuing the Fund's assets and liabilities.
- **Actuarial Gains and Losses**: A combination of the effects of changes in actuarial assumptions and experience adjustments (the effects of differences between the previous actuarial assumptions and what has actually occurred, including reflection of any funding valuation which has taken place since the last report).
- **Actuarial Valuation**: The valuation of the Pension Fund's assets and liabilities. The Actuary then calculates how much needs to be paid into the Fund by both the employer and contributing members to ensure there will be adequate funds to pay pensions when they become due.
- **Actuary**: An independent qualified professional who is engaged in the valuation of pension scheme assets and liabilities. The Local Government Pension Scheme Actuary reassesses the rate of employer contributions to the Pension Fund every three years.
- **Current Service Cost**: The increase in the present value of the defined benefit obligation resulting from employee service in the current period.
- **Curtailments**: costs arising from early payment of accrued pensions in respect of any redundancies during the year.
- **Deferred Benefits**: A future benefit which is being paid for in the current accounting period.
- **Defined Benefit Obligation**: the liability of a pension scheme, as shown on the balance sheet.
- **Defined Benefit Pension Scheme**: A pension scheme which is constructed to provide pre-determined pension benefits for retired members, with employers' and employees' contribution rates being calculated based on actuarial assumptions.
- **Defined Contribution Pension Scheme**: A pension scheme where the level of benefits depends on the value of the contributions paid in respect of each member and the investment performance achieved on those contributions.

- **Net Interest Expense**: The increase during a period in the present value of a defined benefit obligation which arises because the benefits are one period closer to payment.
- **Net Defined Benefit Liability**: the difference between the fair value of the scheme assets and the present value of the defined benefit obligation, shown as either an asset or liability on the balance sheet (depending on whether a surplus or deficit).
- **Past Service Cost**: The increase in the present value of the defined benefit obligation for employee service in prior periods, resulting in the current period from the introduction of, or changes to, post-employment benefits or other long-term employee benefits. Past service cost may either be positive (where benefits are introduced or improved) or negative (where existing benefits are reduced).
- **Projected Unit Credit Method**: An accrued benefits valuation method in which the Fund liabilities make allowance for projected earnings.
- **Remeasurement Gains/Losses**: changes in the balance sheet value of a scheme liability relating to year on year changes in the assumptions applied by the actuary.
- **Settlements**: liabilities settled at a cost materially different to the IAS 19 reserve during the year.

Prepayments

Amounts paid by the Council in year that related to goods and services not received until the following year.

Prior Period Adjustments

Those material adjustments applicable to prior years arising from changes in accounting policies or from the correction of fundamental errors. They do not include minor corrections or adjustments of accounting estimates made in prior years.

Private Finance Initiative (PFI)

A means of securing new assets and associated services in partnership with the private sector.

Property, Plant and Equipment (PPE)

This covers all assets held by the Council with physical substance (tangible assets) that are held for use in the provision of services, for rental to others or for administrative purposes.

Key Definitions used for PPE:

- **Accumulated Depreciation**: The cumulative accounting estimate (excluding the current year) relating to the consumption of a non-current asset.
- **Amortisation**: The process of writing down capitalised expenditure (usually on intangible assets) to the Cost of Services over the estimated useful life of the asset.
- **Community Assets**: Assets that the Council intends to hold in perpetuity, that have no determinable finite useful life and in addition may have restrictions on their disposal (e.g. parks and historic buildings).
- **Depreciated Historic Cost**: The value of an asset shown in the balance sheet calculated from the original cost less depreciation to date.
- **Depreciation**: The process of writing down capitalised expenditure (usually on Plant and Equipment) to the Cost of Services over the estimated useful life of the asset.
- **Disposals**: the value of assets which have been disposed of or decommissioned.
- **Existing Use Value (EUV)**: The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction, after proper marketing. The fair value of land and buildings is to be interpreted as the amount that would be paid for an asset in its existing use.
- **Gross Book Value**: The historical cost or the revalued amount of the asset before depreciation.
- **Infrastructure Assets**: Cheshire East Council's network of roads, pavements, and bridges included within Property, Plant and Equipment.
- **Net Book Value**: The amount at which assets are included in the balance sheet, i.e. their historical cost or current value less the cumulative amounts provided for depreciation.
- **Net Current Replacement Cost**: The estimated cost of replacing or recreating the particular asset in its existing condition and in its existing use, i.e. the cost of its replacement or of the nearest equivalent asset, adjusted to reflect the current condition of the existing asset.
- **Net Realisable Value**: The expected proceeds from the sale of an asset when sold on the open market between a willing buyer and a willing seller less all the expenses incurred in selling the asset.
- **Rateable Value**: The annual assumed rental value of a property that is used for business purposes.

Provisions

Amounts set aside to meet costs that are likely or certain to be incurred but where the amount of cost or timing of payment is uncertain.

Prudential Code

The Prudential Code for Capital Finance in Local Authorities (2011) (Prudential Code) was introduced in 2004 and was developed as a professional code of practice to support local strategic planning, asset management planning and proper option appraisal for local authorities when developing their programmes for capital investment in fixed assets.

Public Works Loan Board (PWLB)

The Public Works Loan Board (PWLB) is a statutory body operating within the United Kingdom Debt Management Office, an Executive Agency of HM Treasury. Its function is to lend money from the National Loans Fund to local authorities, and to collect the repayments.

Receipts in Advance

Amounts received by the Council during the year relating to goods or services to be delivered in the following year.

Related Party

A person or organisation who or which has influence and control over another person or organisation.

Reserves

Specific amounts set aside for future policy purposes or to cover contingencies. There are two types of reserve:

- **Usable Reserves**: These include the revenue and capital resources at the Council's disposal which can be used to fund expenditure or reduce local taxation. Usable reserves include:
  - Capital Receipts Reserve
  - Capital Grants Unapplied
  - Reserves and Balances Held by Schools
  - General Fund Earmarked Reserves (various)
  - General Fund Reserve.

- **Unusable Reserves:** These include unrealised gains and losses, particularly in relation to the revaluation of property, plant and equipment where the value of the asset would only become available to fund the provision of services if the asset was sold. Also included are adjustment accounts used to absorb the difference between the outcome of applying proper accounting practices and the requirements of statutory arrangements for funding expenditure. Unusable Reserves include:
  - Revaluation Reserve
  - Available for Sale Financial Instruments Reserve
  - Capital Adjustment Account
  - Capital Receipts Deferred
  - Financial Instrument Adjustment Account
  - Pensions Reserve
  - Collection Fund Adjustment Account
  - Accumulated Absences Account.

Revenue Expenditure

Revenue expenditure is spending on the day to day running costs of the Council. It includes expenditure on employees, premises, transport and supplies and services.

Section 151 Officer

An Officer appointed under Section 151 of the Local Government Act 1972 which requires every local authority to appoint a suitably qualified officer to assume overall responsibility for the administration of the financial affairs of the Council and preparation of the Statement of Accounts.

Share Accruals

These are the proportional amounts of Net Profit / (Loss) which are shared in accordance with the profit sharing agreement made between Cheshire East Council and its subsidiary and or joint venture entities.

Shared Services

This is a process of merging functions with other organisations to streamline mainstream services, standardise functions and deliver more efficient and effective services. This also enables the Council to have greater leverage and buying power within Government.

Slippage

This is when delays occur in capital works and therefore payments are not made in the financial year originally anticipated.

Subsidiary

This is an entity over which the Council is able to demonstrate it has control, such as a shareholding or representation on the entity’s Board of Directors.

Surplus

Arises when income exceeds expenditure or when expenditure is less than available budget.

Surplus Assets

Property, plant and equipment held by the Council which are not currently used in the provision of Council services.

‘The Code’

The Code is a code of practice on Local Authority accounting that has been developed by the CIPFA/LASAAC Code Board under the oversight of the Financial Reporting Advisory Board. The Code is based on International Financial Reporting Standards (IFRS), on which local authority accounts are now required to be based.

Transfer Payments

Relates to payments for which no goods or services are received by the Council e.g. rent allowances.

Trust Funds

Accounts for which the Council acts as trustee but for which it is not financially responsible and does not own. These amounts are not included within the Council’s balance sheet.

Working for a brighter future together

Finance Sub-Committee

Date of Meeting:	7 September 2022
Report Title:	Review the Medium-Term Financial Strategy Reserve
Report of:	Alex Thompson, Director of Finance and Customer Services
Report Reference No:	FSC/15/22-23
Ward(s) Affected:	All

1. Purpose of Report

1.1. To consider the use of the Medium-Term Financial Strategy (MTFS) reserve to date and its forecast use within the MTFS 2022 to 2026.

1.2. To improve awareness of the approach to managing the Council's MTFS Reserve, including its creation and ongoing governance.

2. Executive Summary

2.1. The Council's Medium Term Financial Strategy (MTFS) includes inter-related annexes covering different elements of the Council's approach to financial management. Revenue and Capital income and expenditure as well as treasury management are included in such annexes. One strategy, contained within the over-arching MTFS annexes, is the Reserves Strategy that, when approved by Council, sets out the approach to managing reserves balances over the period of the MTFS.

2.2. Under Section 25(1) of the Local Government Act 2003, as part of the budget setting process, the Chief Finance Officer is required to report on the robustness of the estimates in the budget which includes the adequacy of the proposed reserves. The report reflects on the approach to holding reserves for planned, specific, purposes and those held to manage risks. In approving the MTFS members have regard to the s.25 Report.

2.3. The MTFS reserve is an earmarked reserve that forms part of the overall useable reserves held by the authority. It provides single use sources of funding that are increased and decreased based on a planned approach within the period of the MTFS. The reserve was approved as part of the statement of accounts reporting on the 2018/19 Financial Year.

2.4. The reserve is an important element of managing the MTFS alongside other key reserves such as the Financing Reserve, the Collection Fund Reserve and General Reserves. The Finance Sub-Committee reviewed the Reserves Strategy, and the purpose of each reserve, in January 2022 as part of the MTFS process for 2022 to 2026.

2.5. This report sets out the current and future forecast balances on the MTFS reserve. This allows the Committee to review and gain an understanding of how the current balance has been accumulated and what future commitments are currently planned.

3. Recommendations

The Sub-Committee is asked to:

3.1. Note the reporting to date in respect of the MTFS reserve.

3.2. Note the forecast movements within the reserve over the next four years.

3.3. Comment on the level of the reserve as part of the overall Reserves Strategy having regard to the s.25 Report of the Chief Financial Officer (Annex A).

4. Reasons for Recommendations

4.1. Members are responsible for setting the Council's budget, which includes having regard to reserves levels. The Sub-Committee requested additional transparency and understanding on where the MTFS reserve has come from and what it is held for. Members are therefore being asked to note the important transactions within the process to manage the reserve to articulate the past and future planned use of the reserve.

4.2. Members are also being asked to comment on the approach to the MTFS reserve in the context of the Council's finances as articulated in the s.25 report of the Chief Financial Officer.

5. Other Options Considered

5.1. Other options were not considered necessary as this report was requested by members of the Sub-Committee as part of their work programme development.

6. Background

6.1. Outturn reporting, in April to June 2019, for the 2018/19 financial year led to the setting up of the MTFS (Medium-Term Financial Strategy) Reserve. This timing meant it was not a feature of the 2019/20 MTFS that had already been approved in February 2019.

6.2. A net nil outturn was reported to Cabinet on 11th June 2019. During outturn reporting for 2018/19 it was clear that significant levels of earmarked reserves remained unspent, but there were financial pressures over the period of the MTFS that exceeded £10m+ per annum. It was also recognised that growth approved in the MTFS, particularly in Corporate Services, would be temporary in nature and required funding from reserves.

6.3. Officers therefore recommended that available reserves were combined to present an MTFS reserve to mitigate the future financial pressure and strategically plan the required use of reserves over time.

6.4. The 2018/19 Statement of Accounts confirmed how the recommendation of officers is presented. The accounts articulated that within the net outturn position there was movement between reserves including the MTFS Reserve being set up at £6.426m. The complete movement in reserves is set out in Annex B – extract from 2018/19 accounts. Transfers to create the MTFS reserve balance were predominantly from ASC Transformation, Enabling Transformation and Service Manager Carry-Forward reserves.

6.5. The original value of the reserve, and therefore potential purpose of this funding, was aligned to items within the MTFS, as well as carry-forward requests from services. The main items are set out in the table below (see Annex C for full list):

Itemised Identified within MTFS opening balance	£m
Local Election Costs 2019 (as per MTFS)	0.450
Growth in HR Services (as per MTFS 3 yrs growth)	0.525
Growth in Legal Services (as per MTFS 3 yrs growth)	0.750
Corporate Services Restructure (as per MTFS 3 yrs growth)	0.840
Local Welfare Safety net (as per MTFS 3 yrs)	0.750
Adults Transformation Reserve	1.180
Other Items below £0.5m (inc. ASC digital development, Finance Structure, Winter Pressure)	1.931
Opening Balance of MTFS Reserve	**6.426**

Transactions within the MTFS Reserve

6.6. The MTFS Earmarked Reserve has been referred to as a ‘smoothing’ reserve as there is planned movement across the four year cycle of the

MTFS that removes the need for stepped change from one year to the next. This approach manages planned increases and decreases in the budget in individual years by topping up or drawing down on the reserve. This mitigates the need to disrupt service levels for a temporary period and separates it from the approach to General Reserves which are utilised to cover emerging risks.

6.7. On an annual basis it is recognised that the approved Revenue Budget may be able to directly fund items originally earmarked as required from reserves. If this is the case, then the balance within the MTFS Reserve can be reviewed and an alternative use determined if appropriate. This approach ensures the annual revenue budget reflects how in-year costs are being managed from in-year funding, which is a more sustainable approach than using one-off reserves.

6.8. **Annex C** shows the detailed transactions in and out of the reserve since its creation.

6.9. The table below shows a summary of the funds that have been **credited** to the reserve since its creation. Detailed actual income and drawdowns to and from the reserve are set out in **Annex C**. The summary table below also sets out the estimated position on the reserve up to the end of 2025/26.

	2018/19 Actual £m	2019/20 Actual £m	2020/21 Actual £m	2021/22 Actual £m	2022/23 Est £m	2023/24 Est £m	2024/25 Est £m	2025/26 Est £m
Opening / Carry Fwd Balance	**-**	**6.426**	**3.439**	**8.083**	**10.068**	**7.535**	**7.202**	**5.552**
Creation of reserve (prev table)	6.426							
Unused NHB Community fund		1.000						
MTFS Budgeted increase (+) / decrease (-) in reserve			1.314	2.646	3.415	0.367	-1.250	0.877
Increase(+) /decrease(-) in reserve following outturn		-1.702	4.990	-0.411				
Use of reserve in year		-2.285	-1.660	-0.250	-3.628	-0.700	-0.400	
Transfer to General Reserves					-2.320*			
Closing Balance	**6.426**	**3.439**	**8.083**	**10.068**	**7.535**	**7.202**	**5.552**	**6.429**

*see 6.10 below

6.10. In response to the outturn for the 2021/22 financial year Council approved the transfer of £2.3m from the MTFS reserve to General Reserves. This recommendation reflected the improvement in the outturn position compared to the year-end position that was forecast when Council approved the MTFS in February 2022. This approach recognised that emerging risks should be managed via General Reserves, and that planned use of reserves should be managed via the MTFS reserve.

6.11. The Reserves Strategy is reviewed on an annual basis as part of setting the MTFS. The Finance Sub-Committee takes the lead on making recommendations for changes to the Reserves Strategy to Council. The Sub-Committee fulfils this role by reviewing the forecast reserves balances in January each year and considering how emerging risks and current spending levels may influence requirements.

Comparator Authorities

6.12. Listed below is a comparison with a sample of other local authorities who hold a similar style of MTFS reserve:

*6.12.1. Cheshire East: "MTFS Reserve" £10.068m at March 2022 – **3.1%** of net budget (£327.7m)*

6.12.2. Rochdale: "Equalisation Reserve" £27.7m at March 2022 – **11.1%** of net budget (£248.9m)

6.12.3. Solihull: "Budget Strategy Reserve" £7.340m at March 2022 – **4.8%** of net budget (£151.4m)

6.12.4. Stockport: "Cabinet One-Off Investment/MTFP/Smoothing Reserve" £6.556m at March 2022 – **2.4%** of net budget (£272.8m)

7. Consultation and Engagement

7.1. Details of budgeted changes to general and earmarked reserves are included in the Reserves Strategy within the annual Medium Term Financial Strategy. The budget engagement every year aims to include any proposed changes to reserves and highlights where budget changes are to be funded from reserves where necessary.

8. Implications

8.1. Legal

8.1.1. The Council has a legal duty to set a balanced annual budget. As part of the budget setting process there must be due regard to the level of reserves to ensure they are sufficient for the size and scale of the authority.

8.2. Finance

8.2.1. Future planned changes to the reserve will form part of the usual budget setting process and will be included in the budget engagement and Medium-Term Financial Strategy on an annual basis.

8.3. Policy

8.3.1. The Corporate Plan will drive and inform Council policy and priorities for service delivery. These priorities may have a direct policy implication on reserves levels and will be considered on a case-by-case basis.

8.4. Equality

8.4.1. Under the Equality Act 2010, decision makers must show 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation;
- Advance equality of opportunity between those who share a protected characteristic and those who do not share it;
- and - Foster good relations between those groups.

8.4.2. The protected characteristics are age, disability, sex, race, religion and belief, sexual orientation, gender re-assignment, pregnancy and maternity, and marriage and civil partnership.

8.4.3. Having "due regard" is a legal term which requires the Council to consider what is proportionate and relevant in terms of the decisions they take.

8.4.4. The Council needs to ensure that in taking decisions on the Medium-Term Financial Strategy and the Budget (including the use of and contribution to all earmarked reserves) that the impacts on those with protected characteristics are considered. The Council undertakes equality impact assessments where necessary and continues to do so as proposals and projects develop across the lifetime of the Corporate Plan.

8.4.5. The process assists us to consider what actions could mitigate any adverse impacts identified. Completed equality impact assessments form part of any detailed Business Cases.

8.5. Human Resources

8.5.1. No direct implications from this report.

8.6. Risk Management

8.6.1. The Council has a legal duty to set a balance budget every year. As part of the budget setting process, the level of general and specific earmarked reserves needs to be carefully managed to ensure that risks can be covered as necessary.

8.6.2. The S151 officer comments on the robustness of all reserves as part of the requirements of Section 25(1) of the Local Government Act 2003.

8.7. Rural Communities

8.7.1. No direct implications from this report.

8.8. Children and Young People/Cared for Children

8.8.1. No direct implications from this report.

8.9. Public Health

8.9.1. No direct implications from this report.

8.10. Climate Change

8.10.1. No direct implications from this report.

Access to Information	
Contact Officer:	Alex Thompson Director of Finance and Customer Services
Appendices:	Annex A – Section 25 Report Annex B - extract from 2018/19 Statement of Accounts Annex C – MTFS reserve
Background Papers:	MTFS 2022-26 (including the latest Reserves Strategy at Annex 13 of the report)

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Cheshire East Council Medium-Term Financial Strategy 2022-26 - extract

February 2022

An Open, Fairer, Greener Cheshire East

Cheshire East Council

Report from the Director of Finance and Customer Services (Chief Finance Officer)

Under Section 25(1) of the Local Government Act 2003, I am required to report on the robustness of the estimates in the budget and the adequacy of the proposed reserves. Council must have regard to this report when making decisions on the budget.

The financial strategies of the Council present a balanced position across a four-year horizon. This position relies on significant assumptions, not least that each proposal within the strategy is achieved and that unforeseen financial consequences can be managed, either by changing plans or temporary use of reserves.

The financial impact of COVID-19 continues to present challenges in longer term forecasting as does the single year nature of the Local Government Finance Settlement from Central Government.

Financing the pandemic

The Council has continued to work with the Local Government Association, County Council's Network and various Treasurer groups to liaise with government departments on the costs and lost income linked to responding to and recovering from the pandemic. Although reserves have been set aside from government funding of the pandemic the MTFS does not present any forecasts that rely on future grants related to COVID-19. If future costs should occur it is expected that government will provide further funding if such financial impacts exceed the Council's previous grants. Confirmation that Contain Outbreak Management Funding can be carried forward in to 2022/23 has been very welcome in this regard.

The full financial impact of COVID-19 will remain unclear until the pandemic is over, and a more sustained level of services and funding has been re-established.

Producing Robust Estimates

The process to produce the Council's Medium-Term Financial Strategy for 2022 to 2026 engaged a wide array of stakeholders throughout 2021/22. This process included public Committee meetings as well as virtual meetings with elected members and staff of the authority. There were also presentations to businesses and partners alongside the on-line public consultation. All responses are coordinated and the results provided to members in advance of the February Council meeting. Changes proposed for the 2022/23 budget are backed with appropriate business cases and equality impact assessments. Changes to proposals since the consultation are clearly identified within this document.

The MTFS Strategy relies on the closing balances and performance within the 2021/22 financial year, but reporting progress during the year has been difficult. The impact of COVID-19 has continued to distort in-year reporting, and the Council also changed the core financial system during the year too. Although monitoring has been ongoing there is a greater risk, compared to previous years, that year-end forecasts may be different to those identified in this report. This risk must be managed through the MTFS Earmarked Reserve in the first instance. Although year-end balances may vary, several issues have required a response in creating a robust set of estimates.

Complexity and market forces have continued to drive over-spending in Children's Social Care. It is still forecast that some efficiency savings will be achievable within Children's Services over the medium-term, but the base budget is being increased by £4m in response to the ongoing financial pressure. Over the four year period to 2026 the changes in this MTFS represent an increase of almost £30m for Children's Services. There has also been an emerging pressure on Home to School Transport. Changes were made to bring services in-house, from the Council's wholly owned company, but pupil numbers, particularly with Special Educational Needs and Disabilities, have significantly increased. In response £1.2m is being added to the 2022/23 transport budget to help manage demand. It is expected a further £1m of COVID-19 funding will also be drawn down to support the service.

During 2022/23 there will be a review of Children's Services to understand the ongoing demand led pressures and ensure appropriate strategies are in place to achieve a financially sustainable position. The review will continue to have access to transformation funding approved by Council in February 2021.

Ongoing demand for Adult Services is being addressed through ongoing annual increases in budget, as is the increasing costs of waste management linked with an increasing population and changes in behaviour (such as more home-working).

The MTFS also recognises inflationary pressure from staff pay awards and increasing utility costs. These are mitigated to a degree by reductions in travel expenses and further funding to support carbon management.

The Capital Programme has been subject to scrutiny to ensure the costs of borrowing are being managed over the medium-term. This review has allowed the funding of an annual Highways Improvement Programme, costing £19m over four years, which responds to Council and resident priorities. The issue of highways maintenance was a feature of the feedback received during the consultation period. This increased programme is partially supported by additional grant funding within the settlement.

The strategy to utilise the Financing Reserve to manage fluctuations in borrowing costs has been effective to date and will support the Capital Financing Budget for the next four years. The strategy is being updated though. The Addendum is being removed as this caused frequent pressure on the revenue budget from expectations that were unaffordable.

The Capital financing budget is increasing significantly over the medium-term to reflect the size of the current programme. It was £12m in 2019/20 and will rise to £21m by 2025/26. Even this significant increase relies on the ongoing drawdown of the Financing Reserve, which is not sustainable. As such any slippage in the programme, or additional receipts from asset sales must be used to minimise further increases in capital financing costs. New schemes should not be added to the programme unless additional funding has been identified to cover the associated whole life costs.

Otherwise, estimates suggest the underlying budget has performed well and presents a sound base for setting future budgets.

To address the short-term government settlement, and potential further funding reductions, council tax increases are included in the MTFS in line with government expectations. Assumptions include the reduction of grants over the medium-term. The quantum of government grant implies an increase in spending power for Local Government over the next three years but there is a threat of reductions to some Councils. Statements from government, with regard to Levelling Up, Business Rate Retention and Fairer Funding, focus on deprivation and access to resources as key features of future funding allocations. Cheshire East Council has low average deprivation and a high tax base and receives funding to compensate for a negative Revenue Support Grant. The grants announced in the settlement in December 2021 are therefore being treated as single year allocations.

These assumptions and response to recognised issues create a robust set of financial proposals. Implementation will remain challenging and will rely on strong leadership and clear and timely decision making from the Council's Committees.

Adequate Reserves

The Reserves Strategy provides information on the impact of the MTFS on the Council's reserves. In considering whether reserves are adequate I have reflected on ongoing work by CIPFA to produce a resilience index as well as considering local and national risks.

Spending in 2021/22 has not increased the risk, which reflects the quality of the Council's ongoing financial management. But overspending has continued in relation to Children's Social Care and Transport. This may not impact reserves due to underspending elsewhere in the budget, but the assessment of robust estimates in this area is again a feature of the MTFS. Reversing the trend of overspending in these services is essential to the management of the MTFS.

General reserves were increased in 2021/22 to £11.5m or 3.3% of the net budget by 2025/26. This reflects the increasing size of the annual budget, but also the fact that forecast spending in later years of the MTFS may be subject to change over time. This level of reserves is relatively low, so does not provide any scope for non-delivery of proposals within the MTFS. Members should recognise that emerging pressures may require identification of additional savings.

Earmarked reserves will be required during the next four years to support the Capital Financing Budget and Collection Fund. This approach is strategic, but ultimately not sustainable in the long-term. It reflects potential year-on-year variations that can occur in these budgets without transferring the potential negative impacts on to services in one year which may be unnecessary in another.

Capital financing costs are increasing over the next four years, as evidenced in the Capital Strategy. This issue will reduce the Financing Reserve significantly, and longer-term profiling of capital expenditure must be considered. The Financing Reserve was also capable of covering abortive costs of capital projects that may not pass feasibility stages. If the reserve continues to reduce then this cost would fall to the MTFS reserve in the first instance. The Collection Fund Reserve is important to protect against risks from revaluations, appeals and changing government policy, particularly in relation to business rates. Use of this reserve may be reviewed in the medium term depending on the governments review of business rate retention.

There are further financial risks associated with High Needs Education and the Private Finance Initiative (PFI) that the Council may have to address in the medium-term. Overspending in High Needs is currently creating a negative reserve, that is only allowable due to an accounting override by the Department for Levelling Up, Housing and Communities (DLUHC). At a point in time, as yet unknown, the Department will remove this override and the Council would have to manage the financial consequences locally. This change will be dependent on negotiation with DfE about future funding levels. Local mitigation for the ongoing rising costs is taking place but no reserves are currently sat outside of general reserves for this. Similarly, there are no additional financial implications identified in relation to the Council's Extra Care PFI. Although any transfer of costs or risks to the Council is not in keeping with PFI schemes the current contract is not running at full capacity due to the fire at Beechmere in 2019.

Although reserves are adequate to support the proposals within this four-year strategy, members must recognise that there is virtually no scope for variation without alternative matching proposals coming forward to retain the balanced position.

Short term variations in annual budgets are capable of being managed through the MTFS Earmarked Reserve. This protects such variations from having immediate negative impacts on services to residents. This reserve must be monitored at least annually to ensure the balance is appropriate, and neither excessive nor inadequate. As the government settlement is currently only certain for a single year this presents a short-term risk. It is therefore appropriate to hold balances in the MTFS reserve this protect services from any potential negative impact from future government funding reviews. Such reviews are due in 2022/23, which could potentially make the 2023/24 financial year somewhat transitional in nature.

Conclusion

Based on my engagement and observations of the process to determine a balanced budget for 2022/23 I can report that the budget presents a robust set of forecasts, subject to the achievement of proposals identified within this report.

Based on my assessment of the risks the Council is able to articulate at this point in time I am satisfied that the Reserves Strategy presents an adequate level of reserves to manage risks as part of a Medium-Term Financial Strategy.

I will monitor the impact of the closure of the 2021/22 financial year, and review in-year performance, in order to provide timely updates over the medium-term.

Alex Thompson

Alex Thompson FCPFA, IRRV(Hons)

Director of Finance and Customer Services

(Chief Finance Officer - Section 151 Officer)

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Transfers to / from Earmarked Reserves

This note sets out the amounts set aside from the General Fund balances in earmarked reserves to provide financing for future expenditure plans and the amounts posted back from earmarked reserves to meet General Fund expenditure.

Earmarked Reserves	Balance at 31 March 2017 £000	Transfers Out 2017/18 £000	Transfers In 2017/18 £000	Balance at 31 March 2018 £000	Transfers Out 2018/19 £000	Transfers In 2018/19 £000	Balance at 31 March 2019 £000
School Balances:							
Primary & Nursery Schools	**(4,553)**	4,533	(3,648)	**(3,668)**	3,779	(4,750)	**(4,639)**
Secondary Schools	**37**	(64)	(210)	**(237)**	326	(459)	**(370)**
Special Schools	**(615)**	294	(217)	**(538)**	517	(527)	**(548)**
Total Schools Balances	**(5,131)**	**4,763**	**(4,075)**	**(4,443)**	**4,622**	**(5,736)**	**(5,557)**
General Fund:							
People:							
ASC Transition Reserve	**0**	0	(1,718)	**(1,718)**	1,724	(6)	**(0)**
Communities Investment	**(583)**	214	0	**(369)**	497	(237)	**(110)**
Early Intervention & Prevention	**(984)**	473	0	**(511)**	511	0	**0**
PFI Equalisation - Extra Care Housing	**(2,060)**	0	(165)	**(2,225)**	0	(148)	**(2,373)**
Public Health	**(536)**	312	0	**(224)**	0	(403)	**(627)**
Other Useable reserves (<£500,000 in value)	**(734)**	531	(317)	**(520)**	399	(308)	**(429)**
Place:							
Investment (Sustainability)	**(2,044)**	1,521	(348)	**(871)**	305	(4)	**(570)**
Royal Arcade Crewe	**(500)**	0	0	**(500)**	0	0	**(500)**
Spatial Planning	**(36)**	0	0	**(36)**	20	(714)	**(730)**
Other Useable reserves (<£500,000 in value)	**(1,637)**	261	(22)	**(1,398)**	719	(1,218)	**(1,897)**
Corporate:							
Brighter Futures Transformation Programme	**0**	0	0	**0**	0	(1,000)	**(1,000)**
Collection Fund Management	**(11,337)**	13,261	(7,334)	**(5,410)**	7,931	(7,530)	**(5,009)**
Enabling Transformation	**(2,142)**	1,204	(4,887)	**(5,825)**	6,043	(219)	**(1)**
Financing Reserve	**(10,750)**	1,723	(3,710)	**(12,737)**	4,386	(3,188)	**(11,539)**
Insurance Reserve - Cheshire County Fund	**(457)**	161	(338)	**(634)**	286	(235)	**(583)**
Insurance Reserve - Cheshire East Fund	**(3,582)**	1,627	(1,626)	**(3,581)**	750	(1,662)	**(4,493)**
New Homes Bonus Community Fund	**0**	0	0	**0**	0	(1,000)	**(1,000)**
Other Useable reserves (<£500,000 in value)	**(123)**	0	(11)	**(134)**	0	(669)	**(803)**
Central:							
Carry Forwards by Service Managers	**(3,017)**	1,399	(790)	**(2,408)**	3,328	(920)	**0**
MTFS Reserve	**0**	0	0	**0**	1,008	(7,434)	**(6,426)**
Revenue Grants Transferred to Earmarked Reserves	**(5,748)**	1,833	(1,488)	**(5,403)**	1,464	(1,508)	**(5,446)**
Trading Reserve	**(1,299)**	107	(537)	**(1,729)**	286	(718)	**(2,161)**
Transitional Funding	**(1,343)**	775	(230)	**(798)**	870	(72)	**(0)**
Total General Fund Reserves	**(48,912)**	**25,402**	**(23,521)**	**(47,031)**	**30,527**	**(29,193)**	**(45,697)**
Total Earmarked Reserves	**(54,043)**	**30,165**	**(27,596)**	**(51,474)**	**35,149**	**(34,929)**	**(51,254)**

These reserves are amounts set aside from General Fund balances, earmarked to provide finance for future expenditure plans.

The following new earmarked reserves have been created in 2018/19:-

- **Brighter Futures Transformation Programme (£1.000m)** has been established to fund the Council’s four year transformation programme and its five outcomes of Culture; Estates and ICT systems; Customer Experience, Commercial Approach and Governance.

- **New Homes Bonus Community Fund (£1.000m)** was made available as part of the MTFS 2018-21 in line with Central Government’s New Homes Bonus guidance for community projects, to be allocated in accordance with local priorities. The funding has been slipped a year to be allocated in 2019/20 and 2020/21.

- **MTFS (Medium Term Financial Strategy) Reserve (£6.426m)** has been provided to support the financial strategy and risk management.

Annex C – MTFS Reserve

				ACTUAL TRANSACTIONS TO DATE						ANTICIPATED FUTURE FORECASTS				
Year of Creation	**Reserve Type**	**DIRECTORATE**	**RESERVE NAME (New reserves per year)**	2018/19 Movement In(+) / Out(-) £000	2019/20 Movement In(+) / Out(-) £000	2020/21 Movement In(+) / Out(-) £000	2021/22 Movement In(+) / Out(-) £000	2022/23 Movement In(+) / Out(-) £000	**Actual Closing Balance by Reserve to Date**	2022/23 Movement In(+) / Out(-) £000	2023/24 Movement In(+) / Out(-) £000	2024/25 Movement In(+) / Out(-) £000	2025/26 Movement In(+) / Out(-) £000	**Forecast Closing Balance by Reserve**
2018/19	MTFS Commitments	Central	Local Election Costs 2019 (as per MTFS)	450	-450				**0**					**0**
		Central	Growth in HR Services (as per MTFS 3 yrs growth)	525	-175	-350			**0**					**0**
		Central	Growth in Legal Services (as per MTFS 3 yrs growth)	750	-250	-500			**0**					**0**
		Central	Corporate Services Restructure (as per MTFS 3 yrs growth)	840	-280	-560			**0**					**0**
		Central	Local Welfare Safety net (as per MTFS 3 yrs)	750	-250	-250	-250		**0**					**0**
	Reserves Requests	Adults	Adults Transformation Reserve	1,180	-487				**693**					**693**
		Adults	Adult Social Care systems & digital development	306					**306**					**306**
		Adults	Town and Parish Council Partnerships	24					**24**					**24**
		Adults	Early Help and Community Grants	30					**30**					**30**
		Adults	Communities Centre Reserve	110					**110**					**110**
		Adults	Community Investment Reserve	90					**90**					**90**
		Childrens	New available walking routes	70					**70**					**70**
		Place	HS2	102	-102				**0**					**0**
		Place	Winter Pressures	230	-230				**0**					**0**
		Place	HMO Licencing Income	61	-61				**0**					**0**
		Corporate	Emergency Assistance	50					**50**					**50**
		Corporate	Human Resources - Agreed training requirements	14					**14**					**14**
		Corporate	Finance & Performance - Business Intelligence Survey	10					**10**					**10**
		Corporate	Finance & Performance - Finance Business Partner Post	20					**20**					**20**
		Corporate	Finance & Performance - Business Intelligence Grade 7 Post	26					**26**					**26**
		Service Manager C/F	Finance	450					**450**					**450**
		Service Manager C/F	Lifelong Learning	200					**200**					**200**
2019/20	MTFS Commitments	Central	Budgeted increase to MTFS reserve (NHB Community)		1,000				**1,000**					**1,000**
	Reserve Requests	Corporate	Parliamentary Review						**0**					
2020/21	MTFS Commitments	Central	Multiple budgeted items to reconcile scenario			1,314			**1,314**					**1,314**
	Reserves Requests	Place	Trees / Structures Risk Management			-500			**-500**					**-500**
		Place	Covid Risk - Local Bus Services			389			**389**	-389				**0**
		Place	Covid Risk - Libraries			55	-31		**24**	-24				**0**
		Place	Covid Risk - Carbon Neutral			252			**252**	-252				**0**
		Place	Covid Risk - Regulatory Service ICT Procurement			50	-50		**0**					**0**
		Place	Covid Risk - Economic Recovery			120			**120**	-120				**0**
		Place	Civicance Income			250			**250**					**250**
		Place	Skills & Growth Income			50			**50**					**50**
		Place	Alliance Joint Venture Income			49			**49**					**49**
		Corporate	Potential shortfall in Income Target				0		**0**	-200				**-200**

Annex C – MTFS Reserve

Year of Creation	Reserve Type	DIRECTORATE	RESERVE NAME (New reserves per year)	ACTUAL TRANSACTIONS TO DATE 2018/19 Movement In(+) / Out(-) £000	2019/20 Movement In(+) / Out(-) £000	2020/21 Movement In(+) / Out(-) £000	2021/22 Movement In(+) / Out(-) £000	2022/23 Movement In(+) / Out(-) £000	Actual Closing Balance by Reserve to Date	ANTICIPATED FUTURE FORECASTS 2022/23 Movement In(+) / Out(-) £000	2023/24 Movement In(+) / Out(-) £000	2024/25 Movement In(+) / Out(-) £000	2025/26 Movement In(+) / Out(-) £000	Forecast Closing Balance by Reserve
2021/22	MTFS Commitments	Central	Budgeted increase to MTFS reserve				1,339		**1,339**					**1,339**
		Central	Voluntary Redundancy central allocation				572		**572**					**572**
		Central	Service Reviews, Contingency & Integration				800		**800**					**800**
		Central	Museums				-100		**-100**					**-100**
		Central	Balancing item				35		**35**					**35**
	Reserves Requests	Childrens	Extended Rights to Free Transport				-201		**-201**					**-201**
		Childrens	Extension of the role of Virtual School Heads				-61		**-61**					**-61**
		Place	Commercial Workstream				-100	-100	**-200**					**-200**
		Place	Alliance Joint Venture Income				31		**31**					**31**
2022/23	MTFS Commitments	Central	Budgeted increase to MTFS reserve						**0**	1,915				**1,915**
		Central	Voluntary Redundancy central allocation						**0**	800				**800**
		Central	Service Reviews, Contingency & Integration						**0**	700				**700**
	MTFS Commitments Possible Use In-year	*Central*	*Voluntary Redundancy central allocation*						***0***	*-800*				***-800***
		Central	*Service Reviews, Contingency & Integration*						***0***	*-700*				***-700***
	Reserve Requests	Place	Transport Services						**0**	-1,000				**-1,000**
		Place	Housing Budget Gap						**0**	-41				**-41**
		Place	Late filing penalties for Civicance/EoTN/Skills and Growth						**0**	-2				**-2**
2023/24	MTFS Commitments	Central	Budgeted decrease to MTFS reserve						**0**		-933			**-933**
		Central	Change to General Reserves						**0**		600			**600**
		Central	Service Reviews, Contingency & Integration						**0**		700			**0**
	MTFS Commitments Possible Use In-year	*Central*	*Service Reviews, Contingency & Integration*						***0***		*-700*			***-700***
	Reserve Requests								**0**		0			**0**
2024/25	MTFS Commitments	Central	Budgeted decrease to MTFS reserve						**0**			-1,050		**-1,050**
		Central	Change to General Reserves						**0**			-600		**-600**
		Central	Service Reviews, Contingency & Integration						**0**			400		**400**
	MTFS Commitments Possible Use In-year	*Central*	Service Reviews, Contingency & Integration						**0**			-400		**-400**
	Reserve Requests								**0**			0		**0**
2024/25	MTFS Commitments	Central	Budgeted decrease to MTFS reserve						**0**				877	**877**
		Central	Service Reviews, Contingency & Integration						**0**					**0**
Adjustment to balance Outturn position / Transfers to General Reserve				**138**	**-1,702**	**4,275**			**2,711**	**-2,320**				**391**
IN-YEAR MOVEMENT				**6,426**	**-2,987**	**4,644**	**1,985**	**-100**		**-2,433**	**-333**	**-1,650**	**877**	
MTFS RESERVE CLOSING BALANCE				**6,426**	**3,439**	**8,083**	**10,068**	**9,968**		**7,535**	**7,202**	**5,552**	**6,429**	

Work Programme – Finance Sub-Committee – 2022/23

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
FSC/6/22-23	9 Nov 2022	Second Financial Monitoring Report for 2022/23	To provide information on performance against the financial strategy during the 2022/23 Financial Year in relation to the Committee's responsibilities. The Committee will be asked to: - Note the financial performance in 2022/23 as it relates to: income and expenditure of Revenue and Capital budgets; movement in reserves; achievement of MTFS proposals. - Note or Approve any mitigating action as a consequence of the performance in 2022/23. - Note or Approve items to be considered as part of the 2023 to 2027 MTFS. - Note or Approve financial management transactions, such as virement and supplementary estimates, as required by the Constitution.	Director of Finance and Customer Services (s151 Officer)	N/A	No	Yes	Ensure that there is transparency in all aspects of council decision making	No

Agenda Item 6

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
FSC/7/22-23	9 Nov 2022	Business Rates Discretionary Relief Review	To review the detail and overall impact of discretionary relief from business rates. The Sub-Committee will be asked to: - Note the detail of the current discretionary relief provided locally. - Note the impact of discretionary relief on the MTFS. - Approve any proposed local changes to the levels of discretionary relief if agreed	Director of Finance and Customer Services (s151 Officer)	TBC	Yes	Yes	Ensure that there is transparency in all aspects of council decision making	No
FSC/18/22-23	9 Nov 2022	The Grants Register	To receive a comprehensive report on The Grants Register, to include an update on the Shared Prosperity Fund.	Director of Finance and Customer Services (s151 Officer)	N/A	TBC	TBC	Ensure that there is transparency in all aspects of council decision making	No
FSC/8/22-23	11 Jan 2023	Financial Planning: Medium Term Financial Strategy 2023 to 2027 Consultation	To allow the Sub-Committee to engage in the MTFS 2023 to 2027 consultation process The Sub-Committee will be asked to: - Note the 2023 to 2027 MTFS proposals as related to the Committee responsibilities. - Provide feedback on the proposals as consultees.	Director of Finance and Customer Services (s151 Officer)	Yes	No	Yes	Ensure that there is transparency in all aspects of council decision making	No

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
FSC/9/22-23	11 Jan 2023	Investment Strategy Review	To review the Council's approach to managing investments as part of the MTFS The Sub-Committee will be asked to: - Consider the appropriateness of the current strategy in light of associated performance and emerging guidance. - Consider and comment on any proposed amendments to the Strategy as part of the development of the MTFS	Director of Finance and Customer Services (s151 Officer)	Yes	No	Yes	Ensure that there is transparency in all aspects of council decision making	No
FSC/10/22-23	11 Jan 2023	Treasury Management Strategy Review	To review the Council's approach to managing Treasury Management, including cashflow, borrowing and investments as part of the MTFS. The Sub-Committee will be asked to: - Consider the appropriateness of the current strategy in light of associated performance and emerging guidance. - Consider and comment on any proposed amendments to the Strategy as part of the development of the MTFS	Director of Finance and Customer Services (s151 Officer)	Yes	No	Yes	Ensure that there is transparency in all aspects of council decision making	No

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
FSC/11/22-23	11 Jan 2023	Capital Strategy Review	To review the Council's approach to managing capital expenditure and associated funding. The Sub-Committee will be asked to: - Consider the appropriateness of the current strategy in light of associated performance and emerging guidance. - Consider and comment on any proposed amendments to the Strategy as part of the development of the MTFS	Director of Finance and Customer Services (s151 Officer)	Yes	No	Yes	Ensure that there is transparency in all aspects of council decision making	No
FSC/12/22-23	11 Jan 2023	Reserves Strategy Review	To review the requirements to maintain financial reserves and to provide statements on the types of reserves and current and predicted balances. The Sub-Committee will be asked to: - Consider the appropriateness of the current strategy in light of associated performance and emerging guidance. - Consider and comment on any proposed amendments to the Strategy as part of the development of the MTFS.	Director of Finance and Customer Services (s151 Officer)	Yes	No	Yes	Ensure that there is transparency in all aspects of council decision making	No

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
FSC/13/22-23	8 Mar 2023	Aligning the MTFS to the Council's Committee Structure	Following the Budget Council meeting the MTFS needs to be aligned with the Committee structure. This promotes financial transparency and accountability. The Sub-Committee will be asked to: Approve the alignment of the MTFS to the Council's Committees. This includes: Revenue; Capital; Reserves; New / Amended Proposals.	Director of Finance and Customer Services (s151 Officer)	N/A	No	Yes	Ensure that there is transparency in all aspects of council decision making	No
FSC/14/22-23	8 Mar 2023	Third Financial Monitoring Report for 2022/23	To provide information on the Council's performance against the financial strategy during the 2022/23 Financial Year. The Sub-Committee will be asked to: - Note the financial performance in 2022/23 as it relates to: income and expenditure of Revenue and Capital budgets; movement in reserves; achievement of MTFS proposals across all Committees.. - Note or Approve any mitigating action as a consequence of the performance in 2022/23 in relation to the Committees responsibilities. - Note or Approve items being considered as part of the 2023 to 2027 MTFS. - Note or Approve financial management transactions, such as virement and supplementary estimates, as required by the Constitution.	Director of Finance and Customer Services (s151 Officer)	N/A	No	Yes	Ensure that there is transparency in all aspects of council decision making	No

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
FSC/16/22-23		S.106 / CIL Oversight	To consider the impact of Developer Contributions (s.106 and Community Infrastructure Levy) on the MTFS. *(Note: Final structure of report dependent upon activity in this area by the Environment and Communities Committee)*					Ensure that there is transparency in all aspects of council decision making	
FSC/17/22-23		National Business Rates - Consultation Response	To consider the Council's response to national consultation on Business Rates To note the content of the consultation material To note the potential impact on the Council's MTFS To note the impact on local ratepayers To approve the Council's response to the consultation questions					Ensure that there is transparency in all aspects of council decision making	

Working for a brighter future together

Finance Sub-Committee

Date of Meeting:	7 September 2022
Report Title:	Procurement Pipeline
Report of:	Alex Thompson: Director of Finance and Customer Service
Report Reference No:	FSC/3/22-23
Ward(s) Affected:	All

1. Executive Summary

1.1. The purpose of this report is to receive an update on the procurement pipeline for the council, the contracts awarded since April 2022 and procurement activity.

1.2. The responsibilities of the Finance Sub Committee include the oversight of procurement. To manage these responsibilities a Procurement Working Group was established at the July Committee. The working group met during August to review several completed procurements and will report back at the September meeting.

1.3. This report supports the Council being open and working transparently with its residents, businesses and partners

1.3.1. **Ensuring that there is transparency in all aspects of Council decision making** (page 3 and 13 Corporate Plan 2021 to 2025) by publishing a pipeline of procurement activity and contracts awarded on the Council's Open Data.

2. Recommendations

2.1. That the Finance Sub-Committee

2.1.1. Note the procurement pipeline of activity in Appendix 1.

2.1.2. Approve the 2 new pipeline projects in Appendix 1 as business as usual (column H approval required).

2.1.3. Note the contracts awarded by the Council since April 2022, Appendix 2.

2.1.4. Note the reason for 7 waivers approved between 1st June 2022 and 31st August 2022 (13 in total in 2022/23).

3. Reasons for Recommendations

3.1. The sub-committee has responsibility for oversight of procurement. To manage these responsibilities the Sub Committee have requested that a working group be established to review past procurement projects and report observation back to the Sub Committee.

3.2. To ensure compliance with the PCR, the Constitution and the Commissioning Framework a procurement pipeline of work is maintained which the Committee should review as part of their responsibilities. This is attached at Appendix 1.

3.3. Column H of the pipeline identifies which procurements are categorised as business as usual and which are categorised as Significant Decisions and require service committee approval. This is due to them incurring non-routine expenditure or having a significant effect on communities.

3.4. To ensure the Council complies with the Local Government Transparency Agenda all contracts awarded are published on the Council's transparency pages on the website. Appendix 2 provides a list of all contracts awarded since April 2022.

3.5. The Contract Procedure Rules set out the necessary controls that are used to manage related spending. There are occasions where it is appropriate to waive these rules with the proper authority.

3.6. Waivers are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process.

4. Other Options Considered

4.1. There is an option not to publish a pipeline of procurement activity that classifies business as usual activity and significant decisions. This option would lead to all procurement activity requiring detailed reports to Committees in addition to the existing oversight from the Finance Sub-Committee and exception reporting to the Audit and Governance Committee. This would cause additional work for officers having to draft routine reports for committee for business-as-usual expenditure. This option is not recommended as the Finance Sub-Committee can provide suitable assurance that spending is, or is not, routine and within the Budget and Policy Framework. Audit and Governance Committee also provide assurance in their role of reviewing procurement activity where procedure rules are waived or not adhered to.

4.2. The responsibility of the Sub-Committee is to establish a procurement forward plan, which is provided at Appendix 1. Other information such as the past spend, review of waivers and approval of significant decisions could therefore be removed from this report as an alternative option. This option is not recommended as the Corporate Plan supports transparency which is enhanced by providing additional context around procurement activity.

5. Background

5.1. It is important for the Council to ensure proper oversight of procurement activity. Following the implementation of the Committee system, Key Decisions have been replaced within the Constitution by "Significant Decisions".

5.2. Oversight is important as in a normal operating year the Council spends more than £350m with external parties which need to be procured in accordance with the PCR's 2015 ensuring value for money and that the Council's Social Value principles and objectives are achieved.

5.3. The Finance Sub Committee approved the Terms of Reference for the Procurement Working Group in July 2022. The group met during August to review a number of procurements to provide the Sub Committee with assurance that the procurement projects followed the Contract Procedure Rules, complied with the Public Contract Regulations 2015 and achieved value for money. The feedback will be provided at the September Committee.

5.4. The procurement pipeline provides a list of all the Council's scheduled procurement activity above £1m. The Committee should be reassured that significant decisions are well managed and therefore consider reviewing important or valuable contracts.

5.5. All waivers approved in the periods between Finance Sub-Committees will be presented to the next Committee meeting. The number of waivers to be reported to this committee is 7. The detailed waivers are set out in Part 2 of the agenda as they contain exempt information.

5.5.1. Table 1: Waivers

Waivers	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021 - 2022	April – August 2022
	40	20	16	17	25	37	13

5.5.2. The number of waivers increased over the past two years because of COVID and the impacts it has had on the care sector. So far this year 8 of the waivers approved have been care related.

6. Consultation and Engagement

6.1. Consultation and engagement have been undertaken with Cheshire East Council staff who have a role within Commission, Procuring and Contract Managing goods, services or works for the Council.

7. Implications

7.1. Legal

7.1.1. The Councils commercial legal team will work with procurement and seek to ensure that the Council's procurement activity complies with the PCRs and the Council's contract rules; and will look to advise on the appropriate form of contracts to be used.

7.2. Finance

7.2.1. The recommendations in this report do not impact on the Council's Medium Term Financial strategy (MTFS).

7.3. Policy

7.3.1. New policies regarding Contract Management and the roles and responsibilities.

7.4. Equality

7.4.1. All tenders issued by the Council include a Selection Questionnaire which asks bidders to confirm obligations in environmental, social and labour laws. This is a self-declaration which provides a formal statement that the organisation making the declaration has not breached any of the exclusion grounds, including Equality Legislation. If a serious misrepresent is found in the Selection Questionnaire, bidder may be excluded from the procurement procedure, and from bidding for other contracts for three years.

7.4.2. All Cheshire East Council contracts have a clause stating "the supplier shall perform its obligations under the Contract in accordance with all applicable equality Law and the Council's equality and diversity policy as provided to the Supplier from time to time"

7.5. Human Resources

7.5.1. There are no direct implications for HR.

7.6. Risk Management

7.6.1. Contract and supplier risks and issues will be managed through the new Contract Management System ensuring supply chain risks are monitored and managed appropriately with visibility across the Council.

7.7. Rural Communities

7.7.1. There are no direct implications for rural communities.

7.8. Children and Young People/Cared for Children

7.8.1. There are no direct implications for children and young people.

7.9. Public Health

7.9.1. There are no direct implications for public health

7.10. Climate Change

7.10.1. Carbon and the environment form part of the Council's Social Value Policy and Framework. How the Council measures the outcomes and performance from the supply chain will be through the Contracts Management Framework.

Access to Information	
Contact Officer:	Lianne Halliday Lianne.halliday@cheshireeast.gov.uk
Appendices:	Appendix 1 Pipeline (spreadsheet) Appendix 2 Contracts (spreadsheet)
Background Papers:	Waivers - exempt

Data is available on the Cheshire East website, link below.

https://opendata-cheshireeast.opendata.arcgis.com/search?sort=name&tags=contracts%20register

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Pipeline: Pipeline
22 036 Care at Home (Adults)
22 065 DPS - Home to School & Commercial Transport
22 083 Handforth Garden Village Primary Infrastructure Works
22 048 Children's Care at Home
22 033 Day Opportunities
22 104 Kingsley Fields New Primary School
22 091 Congleton Greenway Bridge
19 092 PROVISION OF A BUILDING INTEGRATED GROUND MOUNTED SOLAR PV SCHEME
22 098 Supply of Water and Wastewater Services.
22 035 Carers Hub
21 084 Construction Related Consultancy Services
22 100 Provision of Fresh Produce, Bread and Dairy
21 110 FC Chester and Delamere Street Developments
22 077 Holiday Activity Fund Provider Framework (HAF)
23 022 Emotionally Healthy Children & YP
23 014 Hybrid Cloud Converged Platform Support and Maintenance
23 030 Universal Information & Advice
22 049 Provision of Franking Machines

Project Status	Date Tender to be advertised	Estimated Contract start date	Overall Project Budget
Pre tender	04/12/2022	04/09/2023	GBP140,000,000.00
Pre tender	01/09/2022	01/11/2022	GBP60,000,000.00
Pre tender	01/12/2022	01/02/2023	GBP37,000,000.00
Pre tender	01/12/2022	02/05/2024	GBP22,000,000.00
Live	04/05/2022	01/08/2022	GBP7,000,000.00
Live	18/08/2022	10/10/2022	GBP6,800,000.00
Forward plan	12/12/2022	01/04/2023	GBP5,300,000.00
Live	23/03/2022	25/07/2022	GBP4,000,000.00
Forward plan	01/06/2023	01/04/2024	GBP3,800,000.00
Live	27/06/2022	01/01/2023	GBP3,750,000.00
Live	14/02/2022	30/11/2022	GBP3,500,000.00
Pre tender	16/10/2022	01/03/2023	GBP3,300,000.00
Live	04/08/2022	03/01/2023	GBP2,800,000.00
Pre tender	15/09/2022	12/12/2022	GBP2,500,000.00
Forward plan	30/08/2023	01/04/2024	GBP2,000,000.00
Pre tender	30/09/2022	01/03/2023	GBP1,500,000.00
Forward plan	03/10/2022	03/04/2023	GBP1,108,000.00
Live	16/06/2022	23/09/2022	GBP934,200.00

Department	Finance sub committee approval	Approval Required
Integrated Commissioning	Service Committee Approval - March 22	
Highways	07/07/2022	
Economic Development	Cabinet 11/09/2018	
Children's Commissioning	Childrens Committee24/03/2022	
Integrated Commissioning	Service Committee Approval - November 2021	
Estates	Childrens Committee 14/02/2022	
Highways	Service Committee Approval - July 2022	
Economic Development	02/02/2021	
Estates	07/09/2022	**Yes**
Adults Commissioning	Service Committee Approval - 24th March 2022	
Estates	05/01/2022	
Education Infrastructure and Outcomes	07/09/2022	**Yes**
Housing	Jul-21	
Children's Commissioning	Due at Committee September 2022	
Public Health	Service Committee approval required	
ICT Services	07/07/2022	
Adults Commissioning	Adults and Health Committee 26/09/2022	
Estates	07/07/2022	

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Contracts Register - April - August 2022

Contract Ref	Contract: Contract Name	Status	Start Date	End Date	Awarded Value	Department
C1076	P442 General Estates Support and Disposal	Active	01/04/2022	31/03/2026	£ 900,000.00	Highways
C1347	NHS Health Checks_Greenmoss Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C0950	Citroen Berlingo Vehicle Lease	Active	01/04/2022	31/03/2025	£ 7,577.64	Integrated Adult Social Care
C1343	NHS Health Checks_Chelford Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1344	NHS Health Checks_Cumberland House Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1257	Fibre Testing	Expired	24/05/2022	13/06/2022	£ 350.00	ICT Services
C1346	NHS Health Checks_Grosvenor Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C0860	Emergency Assistance Scheme Lot 1	Active	01/04/2022	31/03/2026	£ 262,000.00	Business Change
C1068	SCE SQL/CIS CPS	Active	01/06/2022	31/05/2025	£ -	ICT Services
C1045	P438 Research study - Covid 19 effects	Active	09/05/2022	07/04/2023	£ 79,995.00	Financial Support and Procurement
C1481	Kingsley Fields, New 1FE Primary School RIBA Stages 3-7 - Lot 7	Active	22/08/2022	28/02/2025	£ 5,250.00	Education Infrastructure and Outcomes
C0941	Cross browser testing platform	Active	16/08/2022	15/08/2023	£ 1,198.00	ICT Services
C1324	Short Stay CCG Beds	Active	01/04/2022	30/09/2022	£ 143,000.00	Adults Commissioning
C1327	Short Stay CCG Beds	Active	01/04/2022	30/09/2022	£ 98,800.00	Adults Commissioning
C1466	The Dingle Primary School Expansions RIBA 2-3 - Lot 5 Building Surveying Service	Active	20/07/2022	30/03/2023	£ 11,374.25	Education Infrastructure and Outcomes
C0820	Building Services Contract	Active	01/04/2022	31/03/2029	£ 97,000,000.00	Estates
C0911	P441 General Estates Support and Disposal	Active	01/04/2022	31/03/2026	£ 700,000.00	Highways
C1339	NHS Health Checks_Audlem Medical Practice	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1342	NHS Health Checks_Cedars Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C0896	FULLY MANAGED SERVICE FOR ENERGY SUPPLY	Active	01/04/2022	31/03/2027	£ 30,500,000.00	Estates
C1479	ICT Technicians Schools - Branded T-Shirts	Active	23/08/2022	30/08/2022	£ 318.75	ICT Services
C0763	Crewe Town Centre Heat Network - lot 3 QS Services	Active	18/07/2022	29/09/2023	£ 7,500.00	Environmental Services
C1353	NHS Health Checks_Kenmore Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1354	NHS Health Checks_Kiltearn Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1355	NHS Health Checks_Knutsford Medical Partnership	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C0829	Cash receipting and Income Management Software	Active	01/05/2022	30/04/2027	£ 416,697.00	ICT Services
C0831	Sharepoint Online	Active	03/05/2022	03/05/2023	£ 48,100.00	ICT Services
C1340	NHS Health Checks_Broken Cross Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1337	NHS Health Checks_Alderley Edge Medical Practice	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1245	Barnfield Farm Central Heating Installation	Active	01/06/2022	31/12/2022	£ 9,500.00	Estates
C0828	Early Intervention & Prevention - Sensory Impairment, hearing	Active	01/04/2022	31/03/2025	£ 150,000.00	Mental Health and Learning Disability
C1351	NHS Health Checks_Holmes Chapel Health Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1476	Summer Reading Challenge materials for CE libraries	Active	01/04/2022	31/03/2023	£ 6,100.00	Neighbourhood Services
C0825	BACS Payment Platform	Active	16/06/2022	16/06/2024	£ 40,780.00	Financial Support and Procurement
C1371	NHS Health Checks_Wilmslow Health Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1365	NHS Health Checks_Park Lane Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1081	P448 Creative communication project and campaign services for CEC Supplier B	Active	01/04/2022	31/03/2024	£ 100,000.00	Business Change
C1364	NHS Health Checks_Park Green Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1345	NHS Health Checks_Earnswood Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1160	Sensory Items	Expired	05/04/2022	30/06/2022	£ 8,812.80	Cared for Children and Care Leavers
C1080	P447 Creative communication project and campaign services for CEC Supplier A	Active	01/04/2022	31/03/2024	£ 100,000.00	Business Change
C1358	NHS Health Checks_Meadowside Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1096	P455 Information Assurance and Data Management Programme	Active	04/04/2022	31/03/2023	£ 133,525.00	ICT Strategy
C1058	Consultancy Services for Definitive Map Modification Order Application	Active	07/07/2022	30/09/2022	£ 7,200.00	Culture and Tourism
C1274	Solar Sites Feasibility	Expired	24/06/2022	12/08/2022	£ 48,319.00	Environmental Services

Contract Ref	Contract: Contract Name	Status	Start Date	End Date	Awarded Value	Department
C1006	Mobile Catering Licence from Brereton Heath Local Nature Reserve	Active	01/04/2022	31/03/2023	£ 10,600.00	Culture and Tourism
C1249	Resurfacing of outdoor area at Oakenclough Children's Centre	Active	25/07/2022	08/09/2022	£ 18,494.72	Cared for Children and Care Leavers
C1384	Nessus Professional Feed	Active	20/07/2022	19/07/2025	£ 7,819.00	ICT Services
C1389	Locum Educational Psychologists	Active	05/04/2022	01/09/2026	£ 35,000.00	Adult Safeguarding
C1394	External NJC Evaulations	Expired	11/07/2022	11/07/2022	£ 6,000.00	Human Resources
C1027	Oracle Program Technical Support Services	Active	20/05/2022	19/05/2023	£ 28,496.24	ICT Strategy
C1025	Tree Management Software	Active	16/06/2022	16/06/2024	£ 75,855.00	ICT Services
C1392	Promodag Reports	Active	26/07/2022	25/07/2023	£ 1,954.65	ICT Services
C1286	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 156,000.00	Integrated Commissioning
C1280	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 22,100.00	Integrated Commissioning
C1291	MapInfo Pro-Maintenance	Active	01/04/2022	31/03/2023	£ 699.84	ICT Services
C1041	Insurance Claims Database	Active	01/07/2022	30/06/2024	£ 51,072.00	Audit and Risk Management
C1396	Moore Care Care Home - individual placement	Active	01/04/2022	01/04/2024	£ 311,878.32	Adults Commissioning
C1209	Handforth Garden Village, Groundwater Investigations works - Lot 8	Active	23/05/2022	22/05/2023	£ 119,533.00	Economic Development
C1215	Mental Health Assessors (DOLS) - 6. Super support service Limited	Active	01/04/2022	31/03/2023	£ 75,000.00	Adult Safeguarding
C1210	Hardware Support (Bull Escala)	Expired	14/04/2022	14/07/2022	£ 1,104.00	ICT Services
C1212	Mental Health Assessors (DOLS) - 2. Psychiatric Reports and Medicolegal Services	Active	01/04/2022	31/03/2023	£ 135,000.00	Adult Safeguarding
C1299	Apprenticeship - Team Leader or Supervisor	Active	08/04/2022	09/12/2024	£ 4,500.00	Human Resources
C1301	Apprenticeship - Team Leader or Supervisor	Active	31/05/2022	30/11/2023	£ 4,500.00	Human Resources
C1300	Apprenticeship - Business Administration	Active	12/04/2022	13/10/2023	£ 5,000.00	Human Resources
C1305	Apprenticeship - Data Technician	Active	25/05/2022	31/08/2023	£ 12,000.00	Human Resources
C1146	P466 Email and Identity Management Architecture Service	Active	07/04/2022	30/09/2022	£ 62,400.00	ICT Services
C1348	NHS Health Checks_Handforth Health Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1151	TTCE Programme - LFT Home Testing Kits	Expired	04/04/2022	30/04/2022	£ 87,000.00	Public Health
C1178	Specialist Education or Social Care Requirements	Active	11/04/2022	30/12/2022	£ 5,000.00	Special Education Needs and Disabilities
C1370	NHS Health Checks_Waters Edge Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1361	NHS Health Checks_Millcroft Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1368	NHS Health Checks_South Park Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1360	NHS Health Checks_Middlewood Partnership	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1352	NHS Health Checks_Hungerford Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1362	NHS Health Checks_Nantwich Health Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1372	NHS Health Checks_Wrenbury Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1123	The supply of cleaning services at properties used by CEC for temp accommodation	Active	01/04/2022	31/03/2023	£ 15,000.00	Housing
C1363	NHS Health Checks_Oaklands Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1356	NHS Health Checks_Lawton House Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1155	Community Infrastructure Solution	Active	21/06/2022	20/06/2025	£ 60,000.00	Strategic Planning
C1382	P469 Urban Design Support	Active	18/07/2022	31/03/2023	£ 16,250.00	Neighbourhood Services
C1375	Apple Developer Account	Active	03/08/2022	03/08/2023	£ 79.00	ICT Services
C1265	Resurfacing of Outdoor Learning Environment at Oakenclough Children's Centre 2	Expired	04/07/2022	04/08/2022	£ 23,520.00	Early Help and Prevention
C1125	Regulatory Services Management Solution	Active	27/07/2022	26/07/2027	£ 473,783.00	Economic Development
C1266	Covid Recovery Youth Voice project 2022	Active	06/06/2022	06/10/2022	£ 11,952.00	Public Health
C1161	Optymyse 3	Expired	21/04/2022	21/07/2022	£ 2,325.00	ICT Services
C1159	Cheshire East Bereavement Services Contract	Active	01/04/2022	31/03/2027	£ 12,303,072.00	Environmental Services
C1158	Contract Lifecycle Management System	Active	11/08/2022	10/08/2024	£ 223,634.00	ICT Strategy
C1378	Storage, Retrival, Index and Digitise Documents	Active	22/06/2022	31/01/2023	£ 285,000.00	ICT Strategy
C1379	Records Management Services	Active	22/06/2022	31/01/2023	£ 190,000.00	ICT Services

Contract Ref	Contract: Contract Name	Status	Start Date	End Date	Awarded Value	Department
C1134	Clerk of Works / NEC4 Supervisor Services 2022-23 Lot 5	Active	01/04/2022	31/03/2023	£ 16,641.30	Estates
C0837	NHS Health Checks	Active	01/04/2022	31/03/2025	£ 1,400,000.00	Public Health
C1049	Legal Support - Appeal Hearing	Active	05/04/2022	04/04/2023	£ 8,000.00	Economic Development
C1164	P460 Cheshire East Children and Families Travel Support Review	Expired - Still Active	11/04/2022	29/07/2022	£ 30,000.00	Financial Support and Procurement
C0841	Education Infrastructure and Outcomes Lifelong Learning	Active	01/07/2022	01/07/2024	£ 19,270.00	Achievement and Attainment
C1163	P459 ICT SharePoint Programme 2022-23	Active	01/04/2022	31/03/2023	£ 25,200.00	ICT Services
C1053	CAV Annual support and maintenance	Active	01/04/2022	31/03/2023	£ 1,660.55	ICT Services
C1165	P462 Food Inspections	Active	05/05/2022	31/03/2023	£ 29,982.73	Environmental Services
C1147	P461 School Dev Pathway-Professional Development of School Leaders & Teachers	Active	23/05/2022	31/08/2023	£ 17,352.63	Financial Support and Procurement
C1267	Disability Adaptation Works SR2001230	Active	26/05/2022	25/05/2023	£ 13,545.99	Housing
C1268	Disability Adaptation Works SR2001584	Active	26/05/2022	25/05/2023	£ 6,096.27	Housing
C1269	Disability Adaptation Works SR2001525	Active	26/05/2022	25/05/2023	£ 30,324.27	Housing
C1350	NHS Health Checks_High Street Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1359	NHS Health Checks_Merepark Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1154	Post Office – Pay-Out Schemes	Active	27/04/2022	27/04/2024	£ 5,330.00	ICT Strategy
C1369	NHS Health Checks_Tudor Surgery	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1367	NHS Health Checks_Rope Green Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1349	NHS Health Checks_Haslington Health Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1366	NHS Health Checks_Readesmoor Medical Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C0915	P414 Contract for the provision of collections services on behalf of CEC	Active	01/04/2022	31/10/2023	£ 500,000.00	Customer Services
C0920	Microsoft Unified Support	Active	01/04/2022	31/03/2023	£ 157,467.00	ICT Services
C1132	Council Tax Energy Rebate/Ukrainian sponsor/Fraud Protection	Active	12/04/2022	12/04/2023	£ 51,822.00	ICT Strategy
C1052	Roadmapping Tool	Active	01/05/2022	30/04/2023	£ 3,794.14	ICT Services
C1051	Copyright Licence	Active	01/04/2022	31/03/2023	£ 15,600.00	Legal Services
C1167	P464 Crewe Hub– Funding and Financing Options and Implementation	Active	11/04/2022	30/06/2024	£ 199,105.00	HS2
C1217	ABI Phase Two Contract	Active	04/04/2022	04/10/2022	£ 5,000.00	Economic Development
C0979	21 204 Refurbishment of 5 Children Libraries	Active	09/06/2022	01/11/2022	£ 100,000.00	Neighbourhood Services
C1063	iNetwork Membership Subscription	Active	01/04/2022	31/03/2023	£ 7,650.00	ICT Strategy
C1184	Remove Netbackup Instance	Expired	12/04/2022	31/05/2022	£ 2,300.00	ICT Services
C1057	Consultancy Services for Definitive Map Modification Order Application	Active	07/07/2022	30/10/2022	£ 7,200.00	Culture and Tourism
C1185	MEB - Impact Assessment Conservation Payments (Phased)	Active	01/04/2022	01/04/2023	£ 281,422.02	Highways
C1248	Macclesfield Library Data Point	Expired	18/05/2022	17/06/2022	£ 575.00	ICT Services
C1253	P467 Review of Traded Services to Schools	Active	01/08/2022	30/12/2022	£ 40,000.00	Financial Support and Procurement
C1250	Call Pause & Resume adapter for the NICE CX1 system	Active	01/04/2022	31/03/2023	£ 16,500.00	ICT Services
C1390	Fibre Test & Termination	Expired	13/07/2022	12/08/2022	£ 650.00	ICT Services
C1387	Locum Educational Psychologists	Active	12/05/2022	01/09/2026	£ 35,000.00	Adult Safeguarding
C1391	Locum Educational Psychologists	Active	01/08/2022	01/09/2026	£ 11,250.00	Adult Safeguarding
C1028	Sharegate Desktop	Active	09/04/2022	08/04/2023	£ 7,995.00	ICT Services
C1393	HR Employee Investigation	Expired	13/07/2022	01/08/2022	£ 5,700.00	Human Resources
C1292	Provision of Mental Health Blocked Beds at Eden Mansions Care Home	Active	04/10/2022	30/09/2022	£ 371,800.00	Integrated Commissioning
C1288	Wilmslow High School Expansion - Enabling Works RIBA Stage 5	Active	16/05/2022	21/04/2025	£ 1,403,405.38	Education Infrastructure and Outcomes
C1281	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 97,500.00	Integrated Commissioning
C1398	Optymyse 3	Active	21/07/2022	21/10/2022	£ 2,325.00	ICT Services
C1285	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 53,820.00	Integrated Commissioning
C1397	Jackson House Care Home - individual placement	Active	01/04/2022	01/04/2024	£ 268,320.00	Adults Commissioning
C1284	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 156,000.00	Integrated Commissioning

Contract Ref	Contract: Contract Name	Status	Start Date	End Date	Awarded Value	Department
C1282	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 284,700.00	Integrated Commissioning
C1283	Contract for System Resilience Beds – Short Stay in Care Homes	Active	01/04/2022	30/09/2022	£ 16,640.00	Integrated Commissioning
C1211	Mental Health Assessors (DOLS) - 3. Ali & Co Limited	Active	01/04/2022	31/03/2023	£ 75,000.00	Adult Safeguarding
C1213	Mental Health Assessors (DOLS) - 4. Kabe Ltd	Active	01/04/2022	31/03/2023	£ 15,000.00	Adult Safeguarding
C1214	Mental Health Assessors (DOLS) - 5. Farashkam Ltd	Active	01/04/2022	31/03/2023	£ 75,000.00	Adult Safeguarding
C1302	Apprenticeship - Team Leader or Supervisor	Active	17/05/2022	30/11/2023	£ 4,500.00	Human Resources
C1298	Apprenticeship - Team Leader or Supervisor	Active	11/04/2022	12/02/2024	£ 4,500.00	Human Resources
C1297	Apprenticeship - Adult Care Worker	Active	06/04/2022	06/07/2023	£ 3,000.00	Human Resources
C1304	Apprenticeship - Lead Adult Care Worker	Active	23/05/2022	23/02/2024	£ 3,000.00	Human Resources
C1415	Hardware Support (Bull Escala)	Active	18/07/2022	17/10/2022	£ 1,104.00	ICT Services
C1416	Cheshire Community Trust	Active	01/04/2022	31/03/2023	£ 5,806.62	Adult Safeguarding
C1421	Corporate Chat Bot Solution	Active	01/05/2022	30/04/2023	£ 924.79	ICT Services
C1424	Locum Educational Psychologists	Active	19/05/2022	01/09/2026	£ 40,000.00	Adult Safeguarding
C1100	P456 Adults Childrens & Public Health Project Consultant (ACPH)	Active	01/04/2022	31/03/2023	£ 97,500.00	ICT Strategy
C1101	P457 Adults Childrens & Public Health Programme Consultant (ACPH)	Active	01/04/2022	31/03/2023	£ 109,250.00	ICT Strategy
C1273	Firewall & Web Content Filtering Service (Smoothwall)	Active	08/06/2022	07/06/2023	£ 13,050.00	ICT Strategy
C1409	Storage heaters SR2002394	Active	06/07/2022	06/07/2023	£ 26,631.20	Housing
C1410	Mural Macclesfield Train Station	Active	06/06/2022	01/09/2022	£ 9,400.00	Culture and Tourism
C1426	WiFi Connectivity Mere Gate - Tatton Park.	Active	01/07/2022	30/09/2022	£ 5,199.00	ICT Services
C1223	Best Interests Assessors DOLs 3.	Active	01/04/2022	31/03/2023	£ 45,000.00	Adult Safeguarding
C1221	Best Interests Assessors DOLs 1.	Active	01/04/2022	31/03/2023	£ 25,000.00	Adult Safeguarding
C1222	Best Interests Assessors DOLs 2.	Active	01/04/2022	31/03/2023	£ 38,000.00	Adult Safeguarding
C1226	Ukraine Evacuees Support	Expired	01/04/2022	30/06/2022	£ 5,330.00	Communities
C1232	Ellesmere Port Market Data Point	Expired	03/05/2022	10/05/2022	£ 495.00	ICT Services
C1437	Non-Commissioned Providers - Betamindes Domiciliary	Active	01/04/2022	02/09/2023	£ 196,446.55	Adults Commissioning
C1439	Non-Commissioned Providers - Care Select	Active	01/04/2022	02/09/2023	£ 6,280.00	Adults Commissioning
C1457	Non-Commissioned Providers - Right at Home North Cheshire and Leigh	Active	01/04/2022	02/09/2023	£ 64,500.00	Adults Commissioning
C1458	Non-Commissioned Providers - Right at Home South Cheshire	Active	01/04/2022	02/09/2023	£ 54,728.40	Adults Commissioning
C1459	Non-Commissioned Providers - Right at Home Stockport & Didsbury	Active	01/04/2022	02/09/2023	£ 64,422.85	Adults Commissioning
C1442	Non-Commissioned Providers - Cheshire Home Care Solutions	Active	01/04/2022	02/09/2023	£ 145,603.00	Adults Commissioning
C1460	Non-Commissioned Providers - SimplyHelpingSeniors Limited	Active	01/04/2022	02/09/2023	£ 29,274.55	Adults Commissioning
C1462	Non-Commissioned Providers - Valour Healthcare Services	Active	01/04/2022	02/09/2023	£ 156,300.00	Adults Commissioning
C1434	Non-Commissioned Providers - Anew Young People Services Ltd	Active	01/04/2022	02/09/2023	£ 12,300.00	Adults Commissioning
C1438	Non-Commissioned Providers - Bluebird Care	Active	01/04/2022	02/09/2023	£ 172,492.00	Adults Commissioning
C1447	Non-Commissioned Providers - Family Care Solutions	Active	01/04/2022	02/09/2023	£ 5,485.80	Adults Commissioning
C1445	Non-Commissioned Providers - Extra Mile Homecare	Active	01/04/2022	02/09/2023	£ 36,160.00	Adults Commissioning
C1449	Non-Commissioned Providers - Helping Hands	Active	01/04/2022	02/09/2023	£ 291,176.80	Adults Commissioning
C1310	Fencing for Cledford Primary School	Active	01/07/2022	31/12/2022	£ 6,000.00	Children's Commissioning
C0845	Local Healthwatch Cheshire and Independent Complaints Advocacy Service	Active	01/04/2022	31/03/2026	£ 604,800.00	Integrated Commissioning
C1314	Emergency Assistance Scheme Lot 2 & 3	Active	01/04/2022	31/03/2026	£ 172,800.00	Business Change
C1318	iKiosk Hardware and Software Support	Active	01/04/2022	31/03/2023	£ 15,747.48	Neighbourhood Services
C1010	Choice Based Letting System	Active	01/08/2022	31/07/2024	£ 84,000.00	Housing
C1102	Grid Connection at Leighton	Active	01/04/2022	15/04/2024	£ 457,266.31	Economic Development
C1316	Play Equipment	Active	01/07/2022	31/08/2022	£ 8,433.00	Estates
C1117	P458 Digital Programme Consultant (Active/Jeff Garratt)	Active	01/04/2022	31/03/2024	£ 257,000.00	ICT Strategy
C1086	RFID Self Service Kiosks and Security Gates	Active	01/04/2022	31/03/2025	£ 96,233.98	Neighbourhood Services

Contract Ref	Contract: Contract Name	Status	Start Date	End Date	Awarded Value	Department
C1098	Library self- serve tablet sharing solution	Active	19/08/2022	18/08/2025	£ 36,000.00	ICT Strategy
C1091	Springfield School Expansions - PCSO	Active	18/04/2022	31/07/2023	£ 131,626.21	Education Infrastructure and Outcomes
C0774	Level Access Showers	Active	01/04/2022	31/03/2024	£ 3,000,000.00	Housing
C1011	Data Cabling	Active	13/06/2022	12/06/2023	£ 60,000.00	ICT Services
C0814	Assistive Technology	Active	01/07/2022	30/06/2025	£ 4,778,057.00	Public Health
C1271	Flexera AdminStudio Perpetual licence with Silver Support for 3 years	Active	30/05/2022	30/05/2025	£ 14,669.58	ICT Strategy
C1272	Mind Mapping Software	Active	30/07/2022	29/07/2023	£ 637.50	ICT Strategy
C1033	Digital Customer Enablement Platform	Active	01/04/2022	31/03/2024	£ 925,250.00	ICT Services
C1241	Broker Fees for Financial Instruments 2022/23	Active	01/04/2022	31/03/2023	£ 35,000.00	Financial Support and Procurement
C1238	P468 Delivery of promotional activity & assets to support the council’s capublic	Active	26/05/2022	31/12/2022	£ 20,000.00	Economic Development
C1323	Short Stay CCG Beds	Active	01/04/2022	30/09/2022	£ 155,844.00	Adults Commissioning
C1325	Short Stay CCG Beds	Active	01/04/2022	30/09/2022	£ 338,000.00	Adults Commissioning
C1328	Short Stay CCG Beds	Active	01/04/2022	30/03/2023	£ 443,300.00	Adults Commissioning
C1322	Short Stay CCG Beds	Active	01/04/2022	30/09/2022	£ 114,400.00	Adults Commissioning
C1326	Short Stay CCG Beds	Active	01/04/2022	30/09/2022	£ 135,200.00	Adults Commissioning
C1329	Short Stay CCG Beds	Active	01/04/2022	30/03/2023	£ 561,600.00	Adults Commissioning
C1331	HWRC Improvements 2022 - QS Services - Lot 3	Active	04/07/2022	30/09/2024	£ 8,750.00	Environmental Services
C1334	Organisational Redesign Workshop	Expired	11/07/2022	14/07/2022	£ 17,800.00	ICT Strategy
C1270	Mental Health Assessors (DOLS) - 7. Dr Min Latt	Active	01/04/2022	31/03/2023	£ 75,000.00	Adult Safeguarding
C1169	Mental Health Assessors (DOLS) - 1. Psychiatry Medicolegal Service Limited	Active	01/04/2022	31/03/2023	£ 75,000.00	Adult Safeguarding
C1236	Cherry Tree Lodge Care Home - individual placement	Active	01/04/2022	01/04/2024	£ 361,861.76	Adults Commissioning
C1237	Learning Disability Conference 2022	Expired	20/06/2022	20/06/2022	£ 10,000.00	Integrated Adult Social Care
C1403	CAH Adults Non-Commissioned Providers	Active	01/04/2022	02/09/2023	£ 2,382,745.00	Adults Commissioning
C1407	Park home insulation SR2004222	Active	06/07/2022	06/07/2023	£ 10,015.00	Housing
C1408	Storage heaters SR2003041	Active	06/07/2022	06/07/2023	£ 5,144.00	Housing
C1406	Park home insulation SR2003407	Active	06/07/2022	06/07/2023	£ 10,015.00	Housing
C1405	Haydock House- individual placement	Active	01/04/2022	01/04/2024	£ 260,765.00	Adults Commissioning
C1413	Electrical Remedial works - Tatton Mansion	Active	01/07/2022	31/08/2022	£ 6,816.00	Culture and Tourism
C1473	DPS Complex Needs - Vision Beyond Autism	Active	21/07/2022	25/11/2023		Integrated Commissioning
C1474	DPS Complex Needs - Eternity Care	Active	01/09/2022	25/11/2023		Integrated Commissioning
C1220	Crewe Cultural and Civic Space - PCSO	Active	18/07/2022	24/10/2023	£ 129,338.14	Economic Development
C1228	Royal Arcade Redevelopment Project Management Services - Lot 5	Active	27/04/2022	30/09/2024	£ 126,784.32	Economic Development
C1224	Qualification for Teachers of Children and Young People with vision impairment	Active	01/09/2022	01/07/2023	£ 7,080.00	Human Resources
C1229	Oaktree childrens centre renovation	Expired	03/05/2022	10/05/2022	£ 20,060.00	Children's Commissioning
C1233	Ornate Tree Guards - tatton Park	Active	01/06/2022	31/03/2023	£ 8,000.00	Culture and Tourism
C1427	Interpretation Signage Stableyard Tatton Vison Phase 2.	Active	01/08/2022	30/11/2022	£ 10,000.00	Culture and Tourism
C1149	Maintenance & Repairs of Catering Equipment - fridge/freezers (lot2)	Active	01/08/2022	31/07/2025	£ 25,000.00	Education Infrastructure and Outcomes
C1150	TMP PO PPOs / Closures 22-23	Active	01/04/2022	31/03/2023	£ 15,000.00	Culture and Tourism
C1234	North West Crewe Highways Construction - Stage 2	Active	03/05/2022	31/03/2024	£ 25,484,361.22	Highways
C1463	Non-Commissioned Providers - Right at Home Cheshire East	Active	01/04/2022	02/09/2023	£ 298,881.60	Adults Commissioning
C1452	Non-Commissioned Providers - Homecare Northwest	Active	01/04/2022	02/09/2023	£ 147,262.50	Adults Commissioning
C1435	Non-Commissioned Providers - Aviana Health care	Active	01/04/2022	02/09/2023	£ 13,482.00	Adults Commissioning
C1450	Non-Commissioned Providers - Home Instead - Nantwich (South Cheshire Senior Car	Active	01/04/2022	02/09/2023	£ 146,969.85	Adults Commissioning
C1433	Non-Commissioned Providers - Absolute Angels	Active	01/04/2022	02/09/2023	£ 66,915.00	Adults Commissioning
C1443	Non-Commissioned Providers - Compassionate Care Ltd	Active	01/04/2022	02/09/2023	£ 194,035.00	Adults Commissioning
C1451	Non-Commissioned Providers - Home Instead - Northwich	Active	01/04/2022	02/09/2023	£ 53,197.50	Adults Commissioning

Contract Ref	Contract: Contract Name	Status	Start Date	End Date	Awarded Value	Department
C1456	Non-Commissioned Providers - Reto Care Limited	Active	01/04/2022	02/09/2023	£ 124,494.40	Adults Commissioning
C1461	Non-Commissioned Providers - Tattenhall Local Care	Active	01/04/2022	02/09/2023	£ 15,661.80	Adults Commissioning
C1436	Non-Commissioned Providers - Be Helpful	Active	01/04/2022	02/09/2023	£ 50,600.00	Adults Commissioning
C1454	Non-Commissioned Providers - Lantern Care Services	Active	01/04/2022	02/09/2023	£ 69,826.95	Adults Commissioning
C1464	Non-Commissioned Providers - Your Life Your Way	Active	01/04/2022	02/09/2023	£ 41,178.80	Adults Commissioning
C1446	Non-Commissioned Providers - ExtraHand Care Services Ltd	Active	01/04/2022	02/09/2023	£ 47,712.00	Adults Commissioning
C1440	Non-Commissioned Providers - Carefound Home Care (Wilmslow)	Active	01/04/2022	02/09/2023	£ 31,473.45	Adults Commissioning
C1441	Non-Commissioned Providers - Cherish U Ltd	Active	01/04/2022	02/09/2023	£ 230,119.65	Adults Commissioning
C1444	Non-Commissioned Providers - Compassionate Healthcare Ltd	Active	01/04/2022	02/09/2023	£ 23,170.00	Adults Commissioning
C1448	Non-Commissioned Providers - Goyt Valley Carers	Active	01/04/2022	02/09/2023	£ 41,580.00	Adults Commissioning
C1453	Non-Commissioned Providers - JustCo Ltd t/a Home Instead East Cheshire	Active	01/04/2022	02/09/2023	£ 5,895.00	Adults Commissioning
C1455	Non-Commissioned Providers - My Home Care - Stockport	Active	01/04/2022	02/09/2023	£ 140,805.40	Adults Commissioning
C1307	Structural Consultant	Active	09/06/2022	09/06/2023	£ 10,000.00	Strategic Planning
C1309	Electronic Signature Solution	Active	10/05/2022	09/05/2024	£ 45,643.52	ICT Services
C1330	HWRC Improvements 2022 - Site Investigation - Lot 8	Active	04/07/2022	28/04/2023	£ 9,441.76	Environmental Services
C1333	Mandatory Annual ESFA sub-contracting funding audit	Active	01/06/2022	31/08/2022	£ 7,500.00	Education Infrastructure and Outcomes
C1467	Employee Investigation	Active	05/08/2022	07/10/2022	£ 6,000.00	Care4CE
C1470	Locum Educational Psychologists	Active	05/07/2022	04/09/2022	£ 8,000.00	Adult Safeguarding
C1468	Locum Educational Psychologists	Active	24/05/2022	01/09/2026	£ 30,000.00	Adult Safeguarding
C1336	Adult Respite Support (bed based) Service	Active	01/07/2022	30/09/2023	£ 96,014.28	Integrated Commissioning
C1335	Load Balancer Support	Active	28/05/2022	27/11/2022	£ 1,768.00	ICT Services
C0946	Career Planning Database	Active	01/04/2022	31/03/2023	£ 42,982.27	Early Help and Prevention
C1136	P465 Cheshire East Business Case and Funding Bid Development Services	Active	27/05/2022	31/03/2023	£ 58,454.00	Economic Development
C1338	NHS Health Checks_Ashfields Primary Care Centre	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
C1341	NHS Health Checks_Bunbury Medical Practice	Active	01/04/2022	31/03/2025	£ 40,000.00	Public Health
Total					£ 242,257,652.09	

Working for a brighter future together

FINANCE SUB-COMMITTEE

Date of Meeting:	7 September 2022
Report Title:	Commencement ASDV Governance Review
Report of:	David Brown, Director of Governance and Compliance
Report Reference No:	FSC/30/21-22
Ward(s) Affected:	ALL

1. Purpose of Report

1.1 The purpose of this report is to make proposals for immediate changes to the Council's current arrangements for reporting and risk management of the wholly owned companies. An initial desktop review has been carried out of the recently published CIPFA good practice guide; Local Authority owned companies, together with the findings of the Public Interest Reports on the governance arrangements of various local authority companies (Local Authority Company Review Guidance) together referred to as "the Guidance". A comparison with the Council's current governance arrangements have highlighted risks in the current company structures, and with the levels of transparency and assurance. Improvement in the reporting and assurance can be achieved which will mitigate these risks.

1.2 These revised reporting arrangements will be used to properly inform the Finance Sub-Committee (the Shareholder Committee). It is further suggested that a Shareholder Working Group, drawn from Members of this Sub-Committee, is set up to look to review compliance with the published guidance, review company purpose and look at the most effective and approach to design the Council's longer term company governance, reporting and board arrangements.

1.3 The report contributes to the strategic aims and objectives in the Council's Corporate Plan 2021-25 of Transparency and Fairer Good Governance

2. Executive Summary

2.1 This report:

2.1.1. Sets out the current governance arrangements of the Council's wholly owned companies (ASDVs) and compares that with the approach in the Guidance; and

2.1.2. Makes recommendations for the revision of ASDV governance and reporting arrangements to broadly align with the good practice described in the Guidance and recommends that a full review (in accordance with the Guidance) of the overall company structures and governance arrangements take place.

2.1.3. Proposes a reporting structure as set out in appendix 1 ASDV Report diagram. This proposal will strengthen insight into the operation of the companies and allow the Council to clarify its different roles, in terms of policy (by providing assurance and to balance the audit and governance regime and annual governance statement), the service-based commissioning function and the shareholder function. It provides for quarterly performance updates to members and officers who may then consider/strengthen the commissioning or other role as circumstances change or flex over time.

2.1.4. Makes a further recommendation that the Finance Sub-Committee/Shareholder initiate a more thorough structural and governance review, including a review of directors, their appointment, training and support, to ensure the future arrangements properly reflect the needs of Cheshire East Council against a level of acceptable risk.

2.1.5. A suggested Terms of Reference, subject areas and overall approach (as advised by and based on Guidance documents) is set out in Appendix 2. The committee's attention is drawn to the Wiltshire County Council recent review documents which received positive commentary and are linked in the background papers.

3. Recommendations

3.1. That the Committee:

3.1.1. Supports the contents of the CIPFA Guidance (Local Authority Companies: a good practice guide, 2022), Public Interest Reports and the Governance reports (Appendix 3);

3.1.2. Agrees the appointment of a member of the Finance Sub Committee as a shareholder representative and an observer to the board of each company with access to all information.

3.1.3. Agrees that all Directors immediately receive formal training and that each company provides the shareholder with a programme of training and implementation dates.

3.1.4. Agrees that arrangements be put in place for:

3.1.4.1. Quarterly reporting of Company Accounts to the Central Leadership Team (CLT) and the Shareholder (via the Shareholder Working Group);

3.1.4.2. Annual reporting of Company Accounts to the Audit & Governance Committee.

3.1.5. Agrees the terms of reference and appoints members to a Working group, drawn from Members of this Sub-Committee, to undertake a full review of the structure and governance of its companies in line with the Guidance (and toolkit for undertaking strategic and governance reviews) following which a further report will be brought before the Committee; and

3.1.6. Confirms the closure of Cheshire East Residents First (CERF) and delegates authority to the Director of Governance and Compliance, in consultation with the working group where appropriate, to make any consequential changes to the governance structure of the Council's ASDVs, their respective governance documents (including the Shareholders Agreements) and the Constitution of the Council as necessary in order to implement the revised arrangements.

4. Reasons for Recommendations

4.1. The governance of wholly owned local authority companies has come under the spotlight following failures which have resulted in the publication of Public Interest Reports (Appendix 3A). Those reports highlighted that the failings in the governance of those companies resulted in "institutional blindness" and a failure to recognise, understand and so address commercial pressures and conflicts of interest. These governance failings resulted in high profile financial losses and reputational damage to those Councils and in some cases external intervention.

4.2. The Guidance (Appendix 3B) (produced by an independent advisor, Max Caller and published in September 2021) was a specific recommended outcome of the report on the rapid review of Nottingham City Council. It provides a toolkit for use when reviewing both the Council's governance arrangements for overseeing the entities and holding them to account and reviewing the governance arrangements of the entities themselves.

4.3. In the light of these high-profile company failures, CIPFA have recently published guidance aimed at mitigating the risk to local authorities of company ownership. Whilst framed as guidance, its status is such that it will effect reporting and external assessment of the Council. There is therefore merit in being pro-active and taking action in response to highlighted risk.

4.4. An initial consideration has highlighted the need for revision of the current governance arrangements of the Council's ASDVs, specifically:

4.4.1. Removal of the group company structure, by dissolution of CERF and consequent revision of the Shareholders Agreements and Articles of Association of the remaining ASDVs.

4.4.2. Revision of the composition and governance arrangements of the ASDV Boards by the Implementation of revised arrangements, including the permanent step of appointment of a Member shareholder representative to the Board of each company and the introduction of a quarterly and annual reporting cycle to ensure transparent reporting of company finances against their business plans, to support good governance whilst the full review is undertaken.

4.4.3. Carry out a full review in accordance with the Guidance and accompanying toolkit.

4.5. The recommendations in this report are made in order to:

4.5.1.1. Put in place arrangements to support and inform the review and to reduce identified risks in the current structure.

4.5.1.2. To provide a transparent and clear line of accountability on reporting on performance to the Finance Sub Committee (shareholder).

4.5.1.3. To give governance assurance to Audit and Governance Committee and to provide evidence for the Annual Governance Statement.

4.5.1.4. To inform senior officers on performance and to allow timely instructions to be given to commissioning officers.

4.5.1.5. To inform the review process to ensure a long-term best approach for Cheshire East is developed.

4.5.1.6. Put in place governance arrangements which reflect the good practice approach set out in the Guidance.

4.5.1.7. Promote open and transparent decision making (both by the Council as shareholder and by the Boards of the ASDVs) which is open to scrutiny and demonstrates value for money in the delivery of Council services the nature of which play important part in the delivery of the Council's environmental objectives.

4.5.1.8. To create a governance structure that meets statutory requirements, mandatory guidance, recommended good practice, and reflects the approach to risk adopted by Cheshire East Council.

4.5.1.9. Is sustainable over the medium term and the life of the MTFS.

5. Other Options Considered

5.1.1. This report recommends Option 2.

ASDV Boards are revised, a member of the Finance Sub Committee is appointed to the Board as shareholder representative. The overall board structure is reviewed by the working group, drawn from Members of this Sub-Committee prior to any significant changes.

5.1.1.1. The inclusion of a member of the Finance Sub Committee on the Board provides a transparent and direct means of observing the management and operation of the Council's Wholly Owned Companies at Board level.

5.1.1.2. There is no legal bar to the inclusion of an elected Councillor as a Director. A Councillor could continue to act as a Director and governance mechanisms, both within the Council and the ASDV, such as declarations of interest and observance of the requirements for registering and reporting conflicts of interest, would need to be strictly adhered to.

5.1.1.3. There nevertheless remains a risk that actual or perceived conflicts of interest could arise, with consequential risks in terms of personal liability of the Councillor/Director involved and financial/reputational risk to the Council should good governance not be followed/observed to be followed.

5.1.2. The other options are not recommended for the following reasons:

5.1.2.1. **OPTION 1 Do Nothing** – The Council would not be able to demonstrate that it has taken into account good practice recommendations that have arisen as an outcome of the Public interest Reports and publication of the Guidance.

5.1.2.2. Decision making would remain opaque and the Council may have difficulty demonstrating Teckal compliance.

5.1.2.3. CIPFA have released Guidance on Council Owned Companies, which formally sets out requirements for audit purposes thus compelling compliance.

5.1.2.4. Taking immediate steps and putting in place arrangements for review in the longer term will demonstrate that the Council is taking a proactive approach in reviewing and amending it governance processes.

5.1.2.5. **OPTION 3 – Company Self Assessment and Transparency**

5.1.2.6. The risks in the structure are noted and a full review is carried out.

5.1.2.7. No changes are made the ASDV Boards whilst the outcome of the review is awaited and in the interim Companies are required to self assess risks and propose any mitigations, namely: report on company performance for scrutiny purposes, report on company purpose and benefits of the structure and upon the qualities and effectiveness of the Board.

5.1.2.8. In addition, Companies report to the Audit & Governance Committee for assurance purposes and to set out any proposed mitigation found to be necessary as a result of self assessment.

5.1.2.9. Without transparent observation of the activity of the Company (via Shareholder Representative) the Shareholder remains reliant on the Company's own view of its performance and upon interrogation of information reported to it with no Member perspective as assurance.

Option	Impact	Risk
OPTION 1 **Do nothing**	**The Council would continue to rely on the existing Articles of Association and Shareholder Agreements (albeit that steps could be taken to ensure strict compliance with the requirements for reporting and transparency set out in those agreements).** **The ASDV Boards would not contain any technical (service, legal and financial) support from the Council or be formally required to improve**	**Decision making remains opaque, is not open to scrutiny and does not demonstrate compliance with the good practice recommendations of the Guidance.** **It will be difficult to demonstrate that the companies remain Teckal compliant in terms of their**

	the diversity of their Board. Councillors remain on the Board creating opportunity for conflicts of interest.	governance arrangements. Conflicts of Interest may not be dealt with adequately (in which case Directors will be open to personal liability for any consequent loss).
Option 2 – RECOMMENDED OPTION ASDV BOARDS ARE REVISED AND A MEMBER OF THE FINANCE SUB COMMITTEE IS APPOINTED TO THE BOARD AS SHAREHOLDER REPRESENTATIVE. OPTION 3 – COMPANY SELF ASSESSMENT AND TRANSPARENCY	The company governance documents would be re-written to remove CERF, and cabinet references. Appointment of a Shareholder Representative to the Boards to promote Council oversight. Teckal compliance can be demonstrated as Council has a presence on the Board and oversees governance arrangements. A Councillor shareholder representative will strengthen the shareholder knowledge The company governance documents would be re-written to remove CERF, and cabinet references.	Councillors remaining on the Board in capacity other than shareholder representative - Conflicts of Interest may not be dealt with adequately (in which case Directors will be open to personal liability for any consequent loss). Reputational risk to the Council remains a possibility. Unclear risk profile. Councillors remaining on the Board in capacity other than shareholder representative -

	Teckal compliance cannot be demonstrated as Council has no presence on the Board and the Company continues to oversee its own governance arrangements. **Revised reporting arrangements will result in reporting of company accounts to Members and Officers in accordance with the Council's reporting cycle and to Audit & Governance for assurance purposes.**	**Conflicts of Interest may not be dealt with adequately (in which case Directors will be open to personal liability for any consequent loss).** **No Shareholder Representative - the Shareholder remains reliant on the Company's own view of its performance and upon interrogation of information reported to it with no Member perspective as assurance** **Reputational risk to the Council remains a possibility.** **Unclear risk profile.**

6. Background

6.1. The Council has two remaining wholly owned companies that are engaged in service delivery. They are Ansa Environmental Services Limited (TSS Transport Services Solutions Limited having been subsumed into Ansa on 31 March 2022) and Orbitas Bereavement Services Limited (which remains a separate company acting as agent in the delivery of the Councils bereavement services

6.2. The companies operate as part of a group structure under a parent company, Cheshire East Residents First (known as CERF). The Council is the sole shareholder and owns 100% of the shares in CERF and 20% of the shares in Ansa and Orbitas. The remaining 80% shareholding in each of these companies is held by CERF. This structure distances the arrangements by having the Council's shareholding committee once removed.

6.3. The distance or length of arm of the company and its relationship with the owner is usually seen as a function of purpose. A wholly owned company providing statutory services, which the Council remains liable for, and which uses the ‘Teckal exemption’ to allow the contract to be awarded usually has a close relationship. An entity designed for trading such as a conference or entertainment centre, a local airport or certain types of leisure provision which may be seen purely commercial tend to be more distant. However, even pure commercial ventures such as energy companies require clear accountability, close and careful monitoring.

6.4. The group structure is governed through the Articles of Association and Shareholder Agreements.

6.5. The Council makes decisions as shareholder via the Finance Sub Committee. The Committee’s Terms of Reference set out its role as follows:

“making decisions as Shareholder, reviewing and approving Business plans, including risk registers and commissioning services and functions from the Council’s ASDVs”

The Finance Sub Committee has set up a Shareholder Working Group which assists in carrying out practical tasks and makes recommendations to the Committee.

6.6. Under Regulation 12 of the Public Contract Regulations 2015, a public contract awarded by a contracting authority falls outside the scope of the regulations where;

6.6.1. the contracting authority exercises **a control which is similar to that which it exercises over its own departments (**Regulation 12 (1) (a)); and

6.6.2. a contracting authority shall be deemed to exercise control similar to that which it exercises over its own departments within the meaning of paragraph (1)(a) above where— it **exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person (**Regulation (3)) .

The Regulation 12 exemption above (referred to as the “Teckal exemption”) provides a means by which a local authority may directly award a contract to a wholly owned company. Further elements of the exemption focus on the amount of work the company carries out wholly or mainly for the controlling Council – 80%, and have equal (but not greater) weight, than the sections above, which focus on decision making, and so governance and oversight.

6.7. To effect compliance, the Teckal Exemption is reflected in the Articles of Association (across the Council companies) at Article 7.2 – matters requiring the consent of the shareholders:

“Only the extent that it is necessary to ensure that the Council exercises a decisive influence over both the strategic objectives and significant decisions of the Company similar to that which the Council exercises over its own departments”

6.8. A company director is required (Companies Act 2006) to:

6.8.1. act in a way most likely to promote the success of the company (s172),

6.8.2. exercise independent judgement (s173),

6.8.3. exercise reasonable care, skill and due diligence (s174)

6.8.4. avoid conflicts of interest (s175).

6.9. A Councillor who is a Director of a wholly owned company has in law, an overriding duty to the company. This duty may at times place the Councillor in conflict with the best interests of the Council. Directors have a statutory duty to promote the success of the company for the benefit of its members (Shareholders) as a whole. It has been well documented that issues have arisen, in respect of conflicts of interest, where Council members are acting as directors of companies that are providing services to the Council.

6.10. For example, there may be instances when the requirements of the Council will necessitate that the Company arrange its priorities or carry out delivery in a manner which is less than optimal when compared with the Company's overall objectives. In such cases a Director (Councillor) would be required to act in the best interest of the Company – not to do so would risk committing a criminal offence. This will place the Councillor in a position of having acted in conflict with the role as an elected member.

6.11. Whilst the company and council can waive a conflict, current governance issues include the absence of any Council conflict of interest policy. This is exacerbated by the very wide standing exemption granted by Audit and Governance Committee to directors of ASDV's. The purpose of the exemption is to ensure Councillors are not disenfranchised from annual budget decision making but is currently phrased broadly. It applies to all circumstances including those where a councillor would be obliged to vote on council business in accordance with the company's interests.

6.12. Background – Public Interest reports

6.12.1. **Nottingham City Council (2020)** related to Robin Hood Energy (RHE), set up by the Council in 2015 as a wholly owned not-for-profit subsidiary, in order to tackle fuel poverty in the City of Nottingham. It was recommended that:

6.12.1.1. Recommendation 2 - The Council should review its overall approach to using Councillors on the boards of its subsidiary companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company Board Members

6.12.1.2. Recommendation 3 - Where it continues to use Councillors in such roles, it should ensure that the non-executives (including Councillors) on the relevant board have, in aggregate, the required knowledge and experience to challenge management. This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of Councillors.

6.12.1.3. Recommendation 4 - Where Councillors are used in such roles, the Council should ensure that the Councillors are provided with sufficient and appropriate training, which is updated periodically.

6.12.1.4. Recommendation 5 - The Council should ensure that all elements of its governance structure, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals.

6.12.1.5. Recommendation 6 - When allocating roles on Council-owned organisations to individual Councillors, the Council should ensure that the scope for conflicts of interest is minimised, with clear divide between those in such roles and those responsible for holding them to account or overseeing them.

6.12.2. **Liverpool City Council (2021)** related to the Best Value Inspection during which concerns were identified with Council owned companies and as a result the member directors have been replaced with officers. It was reported that there was no record of the Council appointing an officer to act as shareholder representative or to agree a shareholder agreement to govern their relationship with the companies subject to this inspection and this needed to be done irrespective of wider issues.

6.12.2.1. It was recommended that the Council review the roles and case for continuing with each subsidiary company…ensuring that the Directors appointed are appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. Following the feedback from the Inspection Team during the course of the Inspection LCC took the step of removing all Councillors from their company boards.

6.12.2.2. A further outcome was the commissioning and publication of the Guidance.

6.13. Comparison

6.13.1. The Council's governance arrangements are predicated on a group structure being in place with CERF taking an active role in the arrangements. As set out in paragraphs 6.2 to 6.4, although the Articles of Association and Shareholder Agreements operate a group structure, the Council's shareholder function is discharged via the Finance Sub Committee, which (via the Shareholder Working Group) review their business cases and communicate with the Boards. CERF does not play an active role.

6.13.2. The current governance documents also refer to portfolio holders, exercising executive powers and engagement in the company in a way that is no longer possible following the introduction of a Committee System of governance with the Council. These documents will require a redraft and update to reflect both the Council's new style of governance and the recommendations and guidance aimed at all Local Authorities.

6.13.3. The Nottingham report included the recommendation that the Council should ensure that all elements of its governance structure, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals. The anomalies above highlight the need to review and realign the company governance documents to fit with its processes. The Nottingham report also recommended that where Councillors are appointed as Directors, they should be informed by a full understanding of the role of and legal requirements for company Board Members. Alignment of process will necessarily need to include consideration of potential conflicts of interest and the need for training and awareness of the difference between the Member and Director roles.

6.13.4. In addition, the published Guidance also includes a toolkit for use when reviewing governance arrangements for local authority owned companies (Appendix 3C is a revised version of that toolkit for use as part of a further more in-depth governance review).

6.13.5. The Guidance and evidential requirements of the toolkit highlights the lack of officer and member (shareholder) presence on the Council's company boards. The appointment of an officer from the relevant service and a Finance Officer, together with a member shareholder representative would provide both the anticipated level of control and oversight for assurance of Teckal compliance.

6.13.6. Similarly, as company Directors are currently political (member) appointments, the Council cannot demonstrate that is has ensured that the non-executives on the relevant board have, in aggregate, the required knowledge and experience to challenge management. The review should consider a system of appointment of some company Directors from outside the Council and with the knowledge of operating the particular specialised services outside the local government arena via an open and transparent recruitment process would fulfil this requirement. Appointments should also be subject to review and performance managed.

6.13.7. Where Councillors are acting as Directors, the Council should also be ensuring that the Councillors are provided with sufficient and appropriate training, which is updated periodically, which would need to be demonstrated via a structured training programme and performance review.

7. Proposals for immediate action

7.1 There has been two immediately presenting incidents in respect of ASDV's. These are commercially sensitive and a synopsis and associated legal advice is provided in Appendix 4 (exempt)

7.2 Arrangements are proposed as a necessary measure to mitigate against the risk of a third incident occurring whilst more detailed work and revision of the company documentation occurs.

7.3 In summary these interim arrangements are as follows: .

7.3.1 Further member/shareholder oversight by appointing a shareholder representative to observe all board meetings.

7.3.2 That all Directors immediately receive formal training and that a programme of training is devised and implemented in order to support them in their roles.

7.3.3 Revised reporting arrangements which ensures quarterly reporting of the performance of the company and risk management to CLT and to Finance Sub Committee and active engagement with the assurance role of Audit and Governance Committee (annual report).

7.3.4 Reporting will measure performance against the business plan facilitating transparency by setting out performance, risk and financial position together with an updated business plan.

7.3.5 The revisions above will enhance and note replace the need to provide ongoing to inform for senior officers and the commissioning function or the need for urgent reporting on any serious matters (i.e. Health & Safety matters).

7.4 In addition to the above arrangements, a review is carried out.

7.5 The change in governance system of the Council requires all company documents to be refreshed. The opportunity presented by the change of Council governance is an ideal opportunity to align the review of the council company governance. Appendix 2 suggests areas where the council may gain additional value and it is appropriate that the companies providing such valuable services to the council and residence benefit from a full review.

8. Consultation and Engagement

Discussion with the companies and their Directors.

9. Implications

9.1. Legal

9.1.1. Additional detail is set out in the exempt appendix 4

9.1.2. There are significant liability issues relating to the functioning of companies. Some are a direct function of ownership others relate to how services would be provided in the event of default of the company. Other issues relate to conflict of interest, overlapping liabilities or non-delegable duties etc. It is important that issues are identified and essential to hold timely reviews to ensure compliance with the most recent standards in good governance.

9.1.3. There has been significant public interest in this area following the high-profile company failures in other local authorities. CIPFA Guidance on Council Owned Companies formally sets out requirements for audit purposes thus compelling compliance. Taking immediate steps and putting in place arrangements for review in the longer term will demonstrate that the Council is taking a proactive approach in reviewing and amending it governance processes

9.1.4. Local Government Ethical Standards, Committee on Standards in Public Life Chair: Lord Evans of Weardale KCB DL - 19 January 2019:

Best Practice 14: 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.

9.2. Finance

9.2.1. There are significant financial risks involved in failure of wholly owned company governance. Liability arise from direct ownership or indirectly. For example, a statutory service provider failure will result in urgent funding and if the company has provided indemnity or agreements elsewhere the liability can escalate significantly.

9.2.2. The Council are obligated to ensure the value for money criteria and remain at the forefront of our thinking and ensure the annual governance statement properly reflects the risk profile of the Council’s holdings.

9.2.3. Officers are not remunerated as this is considered as part of their role and the costs of any current director are limited through the company’s agreement with each director

9.3. Policy

9.3.1. Core values of transparency and financial probity, good corporate governance, annual governance statement and reflects on governance code for the council.

9.3.2. Open- the current arrangements for transparency need to be updated meet the best practices standards.

9.4. Equality

9.4.1. There are no direct equality impacts arising from this report.

9.5. Human Resources

9.5.1. Each company is required to have an agreement in relation to each director. That agreement will determine the company's obligation to each Director.

9.5.2. The companies have difference in approach to staffing matters, whistleblowing and it will be necessary to consider if the human resources approach is appropriately aligned with the values of the Council.

9.6. Risk Management

9.6.1. The overall risk profile of the council cannot be separated from any potential provider failure either in terms of statutory service provision or financial liability. The proposals are designed to properly quantify and where possible reduce risk.

9.7. Rural Communities

9.7.1. The governance of wholly owned companies has no direct implications for residents. All residents will have indirect impacts if companies are not able to provide services and evidence value for money.

9.8. Children and Young People/Cared for Children

9.8.1. The governance of wholly owned companies has no direct implications for residents. All residents will have indirect impacts if companies are not able to provide services and evidence value for money.

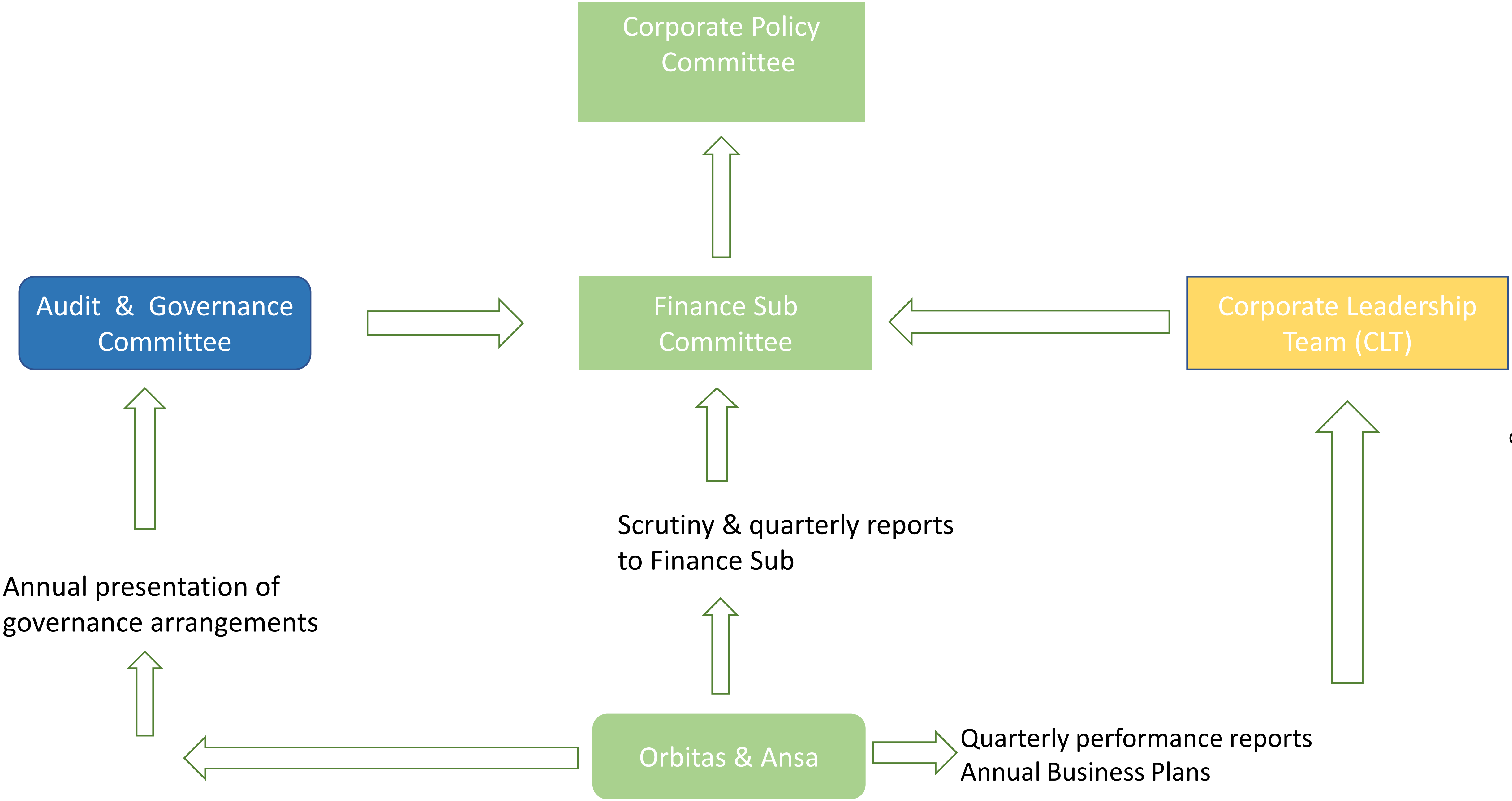
9.9. Public Health

9.9.1. The governance of wholly owned companies has no direct implications for residents. All residents will have indirect impacts if companies are not able to provide services and evidence value for money.

9.10. Climate Change

9.10.1. The governance of wholly owned companies has no direct implications for climate. The Council policy on a sustainable approach can be strengthened through influencing service companies on how statutory services are delivered.

Access to Information	
Contact Officer:	Jamie Hollis - Head of Legal Services
Appendices:	Appendix 1 – ASDV Report Diagram Appendix 2 - Proposed Terms of Reference and suggested areas for detailed consideration. Appendix 3A Public Interest Reports Appendix 3B Guidance on Local Authority Company Governance Appendix 3C Proposed toolkit for use as part of a further more in-depth governance review Appendix 4 EXEMPT Commercially Sensitive
Background Papers:	Issue details - Stone Circle Governance Review | Wiltshire Council Agenda for Cabinet on Monday 27 September 2021, 10.00 am | Wiltshire Council Add link to CIFA Guidance


Corporate Policy Committee
Audit & Governance Committee
Finance Sub Committee
Corporate Leadership Team (CLT)
Scrutiny & quarterly reports to Finance Sub
Annual presentation of governance arrangements
Orbitas & Ansa
Quarterly performance reports
Annual Business Plans

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APPENDIX 2

Finance Sub Committee Working Group

TERMS OF REFERENCE

1. Purpose of the Finance Sub Committee Working Group ("the Group"):

1.1. The Group will carry out a Governance Review of Cheshire East Council Wholly Owned Companies ("WOCs") and report back to the Finance Sub-Committee ("the Sub-Committee") who may make further recommendations to Corporate Policy Committee.

1.2. The Group will:

1.2.1. Review current governance arrangements in place for the WOCs against the Local Authority Review Guidance and toolkit, and CIPFA Guidance.

1.2.2. Report its findings including any risks apparent from this review and as part of its report offer up suggestions as to any revisions to the current governance arrangements in order to mitigate any such risks.

2. Membership

2.1. The Group shall normally consist of 5 persons:

2.1.1. **3** elected members, drawn from the Finance Sub-Committee, the chair of the group shall be appointed by the Sub Committee.

2.1.2. **1** Officer representing Finance

2.1.3. **1** Officer representing legal.

3. In Attendance

3.1. To support the work of the Group the Chair may invite additional individuals to attend each meeting as follows

3.1.1. Officers representing the Commissioning in services; depending on the WOC being reviewed.

3.1.2. Directors from the respective WOCs.

3.1.3. The Shareholder Representative who attends the respective WOC Board.

4. Functions

4.1. The core function of the Group is to:

4.1.1. Follow best practice and learning from other Councils and recently published guidance and include:

- the company governance in relation to the shareholder requirements as set out in the shareholder agreement which must be update following merger of companies and the advent of the committee system. It will consider reserved matters, control and reporting to the shareholder committee.
- The selection, training, number of and skills of directors.
- shareholder representation on the Boards.

- the role of the Council as shareholder in holding the company to account on its business plan objectives and the adequacy of the plans.
- Transparency, publication and reporting.
- The governance and reporting structure to the Committee and Finance Sub Committee in the varied roles of a) a committee of the Council b) as shareholder, c) appropriate scrutiny function and holding directors to account.
- Clear separation of roles between the council as shareholder and the company.
- Minimising the scope for conflicts of interest, proper consideration to a conflict of interest policy;
- Role of the Audit and Governance Committee in overseeing the effectiveness of the governance arrangements and giving assurance in the annual governance statement
- The Special Areas for Consideration (included as an appendix this Terms of Reference).

4.1.2. Provide assurance that the governance arrangements are legally and CIPFA compliant

4.2. The Group shall provide advice to the Sub-Committee on any potential risks to Cheshire East Council associated with the current arrangements

5. Frequency of Meetings

5.1. The Group will meet during the period September to November 2022. The number of meetings will be determined by the Group.

5.2. The Chair of the Group will report the Group's observations and suggestions back to the Sub-Committee in accordance with the Sub-Committee Work Programme.

6. Administration

6.1. Minutes and agendas will be distributed no later than 5 clear working days prior to the meeting.

7. Principal Information needs

- Special Interest Reports (Contained in the appendices and links to the Report to Finance Sub-Committee 7 September 2022).
- Local Authority Review Guidance and Toolkit (September 2021).
- CIPFA Guidance (Local Authority Companies: a good practice guide, 2022)
- Articles of Association of the respective WOCs
- Shareholder Agreements for the respective WOCs
- Suggested Areas for Consideration

“SUGGESTED AREAS FOR DETAILED CONSIDERATION”

1. The company governance in relation to the shareholder requirements as set out in the shareholder agreement.

In order to consider whether the shareholder’s requirements are being met (as set out in the shareholder agreement), it is helpful first to define what is meant by company or corporate, governance.

The definition adopted by the Institute of Chartered Secretaries and Administrators (ICSA), the professional body for company secretaries, is:

‘Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.

The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board’s actions are subject to laws, regulations and the shareholders in general meeting.’ (This is from the Cadbury Report (1992) page 14.)

Current Position

The Council as shareholder must undertake a review of the shareholder agreement. The Council system of governance has changed, and the documentation no longer reflects current structures of the council or roles and responsibilities. The minimum is to update references to cabinet and portfolio holders.

a) Shareholder agreements.

The Council should seek further specialist legal advice in the redrafting of the Shareholder agreements to provide appropriate safeguards for the Council as shareholder. It is thought this will be the first review of their appropriateness since inception.

b) Control

The separate legal entity that a company enjoys, raises issues of control. The Council is the shareholder and funder of the companies, and should, pursuant to the Shareholder Agreements, have a high level of control. This needs testing against current activities to assess if the level of control is and if this remains appropriate.

c) Risk

The Council is taking the risk with the activity of the companies. This is particularly acute when the companies provide statutory services and undertake non delegable duties on behalf of the council. In these situations, companies (often irrespective of cost) can not be permitted to fail. This limits the perceived benefits of a limited liability undertaking or commercial risk taking.

The Council appoints the Directors, who deliver against their Business Plans and are (since the change in governance) accountable to the Finance Sub Committee. The Council funds the activity of the companies, through contractual or service agreements using taxpayers money.

The Council also provides some ‘traded services’ to the companies. Significantly, these service **do not** include the company secretary role, legal, financial or roles.

The review should compare current business plan submission with other business in these sectors and other council owned business.

2. A clear process for decisions, performance and risk reporting from the companies through to Members in the Finance Sub- Committee and Audit and Governance Committee. To Officers through reporting to the corporate leadership team.

Current Position

There is no formal reporting to CLT, in the last year Finance sub committee have been undertaking significant engagement as shareholder. Consideration should be given to how this may link together to improve Council and company planning.

3. The role of the Council as shareholder in holding the company to account on its business plan objectives

The Council has the role of holding the companies to account for delivery against their business plan objectives. The professional body for local authority lawyers, Lawyers in Local Government (LLG) issued a Code of Practice for the Governance of Council Interests in Companies in (2018). It refers to the option of a Shareholder Group to hold the Board to account with the inclusion of commercial expertise if necessary. The Shareholder Group is currently Finance Sub Committee and consideration should/could be given to enhanced their role through bespoke training and the adding of some external commercial expertise to the Shareholder Group, as a non-voting co-optee. (Local Government Act 1972 S.102)

4. Shareholder representation on the Boards

There is currently no definitive advice of the makeup of the Boards of Council owned companies. The Committee system has no executive leadership (Cabinet) and the best mechanism for providing direction to companies in the absence of an elected executive should be carefully reviewed. There are currently no professional officers (save for the shell remnants) or non-executive directors with industry expertise in any Cheshire East Company and consideration should be given to reviewing the expertise available to both the council and the company.

A director of a company has a legal duty to promote the best interests of that company. This can conflict with their other roles. Cheshire East Council has no conflict-of-interest policy, but members have a duty to resolve any such conflicts. This has implications for councillors who have links to the shareholder, or a political group, or a service committee that benefits from service provided by the company. Recent examples include service committees asking companies to undertake activities on behalf of the council.

The LLG Code of Practice is clear, that although conflicts of interest can be waived by the company, as a matter of law they cannot in a local authority setting. A Councillor & Director would always have to resolve a conflict of interest in favour of the company. That is because they have a legal duty at all times to act in the best interests of the company. The LLG Code of Practice therefore counsels against Councillor Directors being appointed, which is consistent with previous Government guidance on the same issue.

This is echoed in some of the recent public interest reports issued for considering some of the problems that Council companies have encountered, including Nottingham, Croydon and Liverpool.

The Robin Hood Energy (RHE) Ltd public interest report into the governance arrangements by Grant Thornton https://www.nottinghamcity.gov.uk/media/2835756/report-in-the-public-interest-rhe.pdf) focused amongst other things on the role of councillors on the board.

There is no Corporate Leadership Team (CLT) representation on the Board. Best practice suggests that if appointing a senior officer to the Board of a Council owned company, that should not be the Chief Executive, the Section 151 Officer or the Monitoring Officer so as not to conflict with their statutory roles.

A full detail review should be undertaken to ensure the company board structure properly reflects the current best practice and the best outcomes for the residents of Cheshire East.

5. Clear separation of roles.

It is appropriate for the council to look at the relationship with the companies through the traded service and insurance provision. These should be reviewed considering the guidance and conflicts of interest identified and where appropriate resolved.

6. Role of the Audit and Governance Committee

During the last 12 months of Committee cycle there has been no proposals for Audit & Governance to consider the governance arrangements or to seek assurance they remain fit for purpose. The review should give consideration supporting and defining an effective role for A&G and the annual governance statement.

This may include consideration of the company finances when considering the council's accounts

There have been some high-profile Council company failures, e.g. Nottingham City Council's Robin Hood Energy which will cost the local taxpayers an estimated £38 million in losses.

Audit and governance issues have a role to ensure the correct structure is in place. This review could be used to provide assurance around the governance and the audit framework.

7. Role of Scrutiny.

The current changes in governance structure has changed the mechanism of the scrutiny function. Finance Sub Committee is the primary committee as shareholder and is responsible to the initial scrutiny of the company. Local government scrutiny function is not found in a commercial environment and the potential to create tension with the shareholder function exists. It is suggested any review should give careful thought to value and positioning of Scrutiny as a check and balance to the risks from company/commercial approach.

This could be coupled with regular performance reporting against the Business Plans to either a Task Group or Sub-Committee.

References

Cadbury Report (1992) (The Committee on the Financial Aspects of Corporate Governance)

LLG Code of Practice for Local Authority Companies (2018)

House of Commons Briefing Paper (2019) Local Government Alternative models of service delivery

Performance of municipally owned corporations: Determinants and mechanisms (2019) Voorn, B. et al

Organizational Publicness and Mortality: Explaining the Dissolution of Local Authority

Companies (2020) Andrews, R.

Public Interest Reports London Borough of Croydon, Liverpool City Council and Nottingham City Council.

Liverpool City Council Best Value Inspection

December 2020-March 2021

Max Caller CBE

Lead Inspector

Contents

1. Executive Summary:

1.1. Liverpool is a city with a great sense of its history and traditions, with many residents fiercely proud of their heritage. In part, due to the decline in its historical activity, it is highly economically deprived even though it hosts a world-leading knowledge economy and, pre-pandemic, was one of the leading UK attractions for tourism.

1.2. The City Council has many hard-working, long serving, committed and dedicated officers delivering key services in difficult circumstances. The Council itself, has Councillors of all parties who encapsulate the best traditions of local democracy, working for their residents and striving to deliver the best possible outcomes for people and place.

1.3. This Inspection report risks devaluing all the good work that is done, as it focusses on serious failings that have been evidenced in both governance and practice in those areas of the Council subject to this Inspection, and the corporate blindness that failed to pick this up and remedy the position. Indeed, the position documented by the Inspection provides the best empirical evidence of Conquest's Third Law of Politics 'The behaviour of any bureaucratic organisation can best be understood by assuming that it is controlled by a secret cabal of its enemies.'

1.4. To remedy these failings will require changes to introduce and embed good practice right across the Council, politically and managerially, building on the start that has been made by the Council's current Chief Executive. These recommended changes will involve revising electoral arrangements, strengthening personal accountability for both Members and Officers, and introducing best local government practice together with cultural change.

1.5. The evidence and events over the Inspection period leads to the conclusion that there can be no confidence that the Council will be able to take and implement all the required decisions in a sensible timescale. As a consequence, the imposition of Commissioners, supported by Directions is recommended to stand behind the Council and ensure that the right decisions are taken at the right time.

1.6. The road to recovery will be hard, as it is inevitable that more bad things will emerge through the process. The outcome will be a Council with transparent decision taking that can legitimately withstand challenge and can be proud of what it delivers.

2. Introduction

2.1. The Secretary of State for Housing, Communities and Local Government, by way of letter dated 17 December 2020, appointed Max Caller CBE to lead a statutory Inspection at Liverpool City Council (LCC), to be completed by the end of March 2021.

2.2. The purpose of the Inspection was to provide direct independent assurance to the Secretary of State that the council is complying with its best value duties following:
a) The Merseyside Police inquiry into fraud, bribery, corruption and misconduct in public office, which involves a significant connection to Liverpool City Council.
b) The response Liverpool City Council submitted to the Ministry of Housing, Communities and Local Government on Friday 11 December 2020 in respect of governance arrangements, oversight and control measures within the Council including details of the measures and controls implemented during the course of the last eighteen months.

2.3. Subsequently on 7 January 2021, at the request of the Lead Inspector, the Secretary of State appointed Viv Geary and Mervyn Greer as Assistant Inspectors.

2.4. The Secretary of State provided the following Terms of Reference in relation to the undertaking of the review, requesting consideration of the following functions of the council and their alignment with the best value duty, the authority's:

- planning,
- highways,
- regeneration and
- property management functions and
- the strength of associated audit and governance arrangements in the exercise of those specified functions.

2.5. In addition, the inspection team were directed to consider whether the authority has effective arrangements in place for securing best value in the functions listed above in paragraph 2.4.

2.6. The full text of the letter of appointment of the Lead Inspector[1] can be found at Appendix 1.

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945914/Letter_to_Max_Caller_CBE_201217.pdf

2.7. The letter of appointment identified the need to seek to agree a Memorandum of Understanding with Merseyside Police, to share relevant information and to avoid prejudicing both the Best Value Inspection and Police enquiries as part of 'Operation Aloft'. This was negotiated and agreed between the Lead Inspector and the Police in the first half of January 2021. A copy is attached as Appendix 2.

2.8. Max Caller CBE is a former London Borough Chief Executive and was one of the Intervention Commissioners, following the imposition of Directions on the London Borough of Tower Hamlets. He led the Best Value Inspection of Northamptonshire County Council in March 2018, the non-statutory review of Nottingham City Council in 2020 and was one of the Non-Executives appointed to support Birmingham City Council in their improvement journey. He was also the Chief Executive of London Borough of Hackney, the first authority to be subject to the Direction regime. Earlier in his career, he co-chaired the Local Authority Association (LAA) Adviser group that produced the first LAA code of good practice on highway maintenance.

2.9. Viv Geary LLM is a Solicitor with 35 years' experience of working in local government in five different local authorities. She was a Monitoring Officer for over 10 years both at Unitary Authority and Combined Authority levels. She has worked with three different elected Mayors and is a specialist in local authority governance having developed, reviewed and updated the constitutional arrangements for a range of different local authorities including those operating elected Mayor and Cabinet, Leader and Cabinet, Combined Authority and Committee governance systems.

2.10. Mervyn Greer's career spans more than 4 decades, he has experience in construction, property and estates management. Starting working life in the design office of a construction business he joined a major structural and civil engineering consultancy working in the middle east on transport, education, and military facilities. Mervyn moved into the Utilities sector where he was responsible for the South East Water Estate. His experience in major construction companies includes PFIs such as HMG Home Office Marsham Street, Barnet NHS Trust and Kings College United Medical Dental School. Mervyn has also conducted reviews of Local Authorities', NHS Trusts and Police Authorities reporting to Governance Boards. Mervyn was the strategic director for Kier responsible for all activities in the Local Government Sector, at its peak valued at £1.5bn pa. He has directly managed key major contracts with local government including under the Building Schools for the Future programme. Mervyn is now engaged by the Cabinet Office as a Crown Representative, responsible for the relationships with the UK's major Construction and FM suppliers. He is an accredited assessor for the

Government Commercial Function programmes for commercial and contract management capability up to commercial director level. He is co-Chair of the Crown Commercial Service Workplace commercial scrutiny board.

2.11. In assessing how to undertake the review the Inspection Team decided to review property disposals from 2015-2020 (the Review Period) to see how the Council had complied with its best value duty. This Review Period covers a period from the last year of the previous Chief Executive through the period when the Mayor chaired management team through to the current Chief Executive's time in post, to test the impact they had made on the organisation. As the Inspection has followed case studies end-to-end, this has meant looking at some issues from much earlier in time, to trace the story in full.

2.12. The Inspection has been undertaken by calling for and reviewing all documentation, relating to over 65 property transactions, highway and building maintenance tender appraisals, an extensive programme of interviews with Councillors, Officers, former Officers, contractors and members of the public. The document review encompassed both published documents and working papers, where they existed. This has enabled an end-to-end assessment of property transactions from initial call for expressions of interest, through negotiations, legal documentation, to planning, planning enforcement, and building control issues. It has also enabled the determination of key elements required to be included in any recovery plan and to identify the support the Council might need to ensure success.

2.13. As the Inspection progressed, it became clear that the quality and coverage of LCC's record keeping, particularly in the Regeneration Directorate was often patchy. New documentation became available only as individual transactions were examined, in a significant number of instances. Towards the end of the Inspection, it was evident that crucial officer exchanges were not held on the files supplied and it became necessary to request that these needed to be recovered from LCC's servers. This only became clear as part of interviews. This report therefore deals with record keeping as an issue as part of the Inspection. The Inspection of LCC is based upon the evidence and documentation provided, supplemented by interviews, which has been reviewed at pace, to meet the timeframe specified by the Secretary of State. As part of the justification for some of the decisions has been the wider benefits to Liverpool and its citizens, the concepts and application of Social Value considerations has also been explored.

Best Value – Generally

2.14. The Best Value legislation states: "A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness[2].

2.15. The concept of continuous improvement must mean that the best value duty must be a process. It must mean that even in the best performing local authorities' errors will occur, failures of policy or practice may result despite good intentions and that an instance of this would not automatically mean a failure to comply with the best value duty. However, it must also mean that an authority will learn from its past performance, rectify defects, and not continue along a path when failure is evident. Such events should be clearly isolated and exceptional, rather than regular and repeated and should be immaterial in value or wider implications. A continued failure to correctly value land or assets, is not an isolated matter and capable of being considered a failure to make the necessary arrangements that the legislation envisages.

Best Value - Land and Property Disposals

2.16. Legislation states that local authorities can dispose of land held by them in any manner they wish as long as it is sold at the best rate that can be reasonably obtained. With the exception of land given on a short lease (less than seven years) any disposals at less than best value needed the permission of the Secretary of State[3]. Best value is defined as the best price that could be reasonably obtained and this, in practice, means at a price set by an accredited valuer as per the technical Appendices to the 2003 Consent Order[4].

2.17. In 2013 a general consent[5] was issued by the Secretary of State. The consent acknowledged that disposing of land at less than best value can sometimes create wider public benefits. Where disposal will help secure improvement of the economic, social or environmental well-being of the area, public bodies such as local authorities could undervalue assets (except for land held for housing or planning purposes) by £2 million or less without the Secretary of State's permission.

2.18. In undertaking a 'less than best' disposal local authorities are expected to satisfy themselves that there are no state aid implications, undertake valuations to ensure that they are not exceeding the £2 million limit and demonstrate the wider public benefits gained. Even under the general consent, housing land is expected to be sold at best /market value and requires permission from the Sectary of State to sell at less than best value.

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[2] Local Government Act 1999 Part 1 section 3(1)
[3] section 123 of the Local Government Act 1972
[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7690/462483.pdf

2.19. In 2015 the Government allowed receipts from land and asset sales to be converted into revenue to provide finances for Local authority services. This encouraged local authorities to sell off parts of their land and property portfolio to generate further income.

Social Value

2.20. Since its introduction in 2012/13, The Public Services (Social Value) Act 2012 has been most effectively taken up by local government and applied to in sourced and outsourced service delivery in varying degrees of success. The original intention of the Act was never to be a punitive measure against suppliers and service providers but was more putative in its design, to ensure that public authorities understood the value of their service to the communities they served.

2.21. As a stand-alone guide this had little positive effect until some level of measurement of intended social value (SV) outcomes could be applied. Through the LGA National Advisory Group (NAG) in partnership with the Social Value Portal the National Social Value Task Force (NSVTF) was set up. This group developed a range of measures that could be adapted and used when authorities were either procuring or commissioning services so that the SV could be assessed. These measures are published in Toolkit form as the National TOMs Framework (Themes, Outcomes and Measures)[6]. For local government, which leads the way on SV delivery, the use of TOMs is currently best practice and gives some consistency of measurement for authorities and suppliers alike.

Thanks

2.22. LCC had assured the Secretary of State of their willingness to engage openly with the Inspection. The Inspection Team wish to thank and acknowledge the efforts made by the Council to provide substantial documentation and to make available Senior Councillors and Officers to meet the timetable, and the openness of the communications. All requests for documentation, information or the facilitation of meetings were dealt with efficiently and speedily. No doubt, many staff were involved in making this happen, but the work of Lisa Smith, Lucy Horne and Brigid Parkinson helped enormously. Special thanks also go to Linda Cheng and Paula Crawford for their welcome and practical support.

2.23. The Inspection Team would also like to thank those Officers, Members and members of the public who came forward to share their personal concerns. Their willingness to share information helped to identify areas of focus.

[5] ibid
[6] https://socialvalueportal.com/national-toms/

Throughout the Inspection Team has endeavoured to see all of those who wanted to meet us and welcomed written submissions from those who wanted to set out the history as they saw it or to point us to areas which needed exploration. Some of the topics identified were outside the scope of this Inspection. In such a short Inspection period it was never possible to explore every item raised and come to a specific conclusion on that individual topic. That would require an in-depth audit process with considerably more resources. However, each area looked at has contributed to the overall findings and conclusions. They have highlighted the systemic nature of the issues facing LCC leading to the overall findings and conclusions. Just because an individual site or issue is not mentioned by name does not mean that the Inspection Team failed to look at it or take it seriously.

2.24. The Inspection Team were supported by Eleanor Smyllie, seconded from MHCLG. Her knowledge, skills and commitment were instrumental in ensuring this report was delivered to the Secretary of State to meet the deadline. Her insights and work are a credit to the Civil Service.

3. About Liverpool City Council

3.1. Liverpool is the largest constituent member of the Liverpool Combined Authority. The Council serves a growing and vibrant population of approximately 498,000[7] making it the 10th biggest council by population size in the UK. The city centre area also houses up to 50,000 students and other short-term residents not captured by the ONS figure but captured in health statistics[8].

3.2. Liverpool is the fourth most deprived local authority area in England[9]. It has a comparatively youthful population with 42.5% of the population under the age of 30 compared to an English average of 37.7%[10] but life expectancy is 6 years lower than the England average and health outcomes are poor with a recent report concluding 86% of people are not active enough to maintain a good health[11]. Its employment rate is also below the national average and 16% of Liverpool residents have no qualifications (16-64) which is double the national average of 8%[12].

3.3. The decline of Liverpool's dockland and industry is well documented and has left numerous vacant sites across the city. This combined with an aging housing stock has meant that development and regeneration initiatives are welcomed in the city.

3.4. The city centre has seen large amounts of investment and development over recent years, this has started to spread along the waterfront and out towards the Georgian parts of the inner-city centre arch. However, the outer suburbs have seen comparatively little investment. Much of the city centre development has been student accommodation and hotels, justified by its growing student population. Within the city there are four universities serving around 50,000 students, a large proportion (around a fifth overall and around a third at University of Liverpool) coming from outside the UK to study in the city[13]. Before the pandemic, there was a thriving tourism sector, in 2019 Liverpool was the 5th most visited city in the UK [14].

3.5. There are currently 15 local authorities with a directly elected mayor and

[7] Liverpool Key Statistics Release, data point as of 3rd March 2021 (https://liverpool.gov.uk/council/key-statistics-and-data/headline-indicators/)
[8] Liverpool Key Statistics Release February 2021 (https://liverpool.gov.uk/council/key-statistics-and-data/headline-indicators/)
[9] Indices of Deprivation 2019
[10] UK Census (2011). "Local Area Report – Liverpool Local Authority". Nomis. Office for National Statistics, accessed 13 March 2021
[11] Mayor of Liverpool Inclusive Growth Plan March 2018, accessed on 13 March 2021
[12] Ibid
[13] The Great British Brain Drain: Liverpool 20 Jan 2017, accessed on 13 March 2021
[14] Mayor of Liverpool Inclusive Growth Plan March 2018, accessed on 13 March 2021

cabinet model of governance. Initially the change to this model was only available following a local referendum in favour of an elected mayor, but since 2007 it has been possible for a Council to resolve to change to the mayor and cabinet model without the support of a referendum. Liverpool City Council resolved to adopt an elected Mayor (the Mayor) and Cabinet model of governance in February 2012. In May 2012, the first and only elected Mayor of Liverpool City Council, Joe Anderson OBE, was elected and was re-elected in 2016. Mayoral and all other local elections were postponed in 2020 due to the Covid pandemic and, following his arrest and suspension by the Labour Party, Joe Anderson stood down from acting as Mayor and has decided not to seek re-election in May 2021.

3.6. An elected mayor, who is not a councillor cannot be removed during their term of office unless they become ineligible but if they are unable to act or stand aside the statutory deputy mayor, who is a councillor, exercises their powers. In Liverpool, as a consequence, Cllr Wendy Simon is acting as Mayor. Otherwise, although the mayor is an authority's principal public spokesperson and provides the overall political direction for a council, an elected mayor has no additional local authority powers over and above those found in the leader and cabinet model, or the committee system.

Political Balance

3.7. LCC currently elects 90 councillors representing 30 wards, on a uniform pattern of 3 members per each ward. Elections for a third of council seats occurs each year. In normal circumstances, the mayoral election will take place in the third year. The last elections took place in 2019, and, following death and resignations, the current political balance of the Council is 68 Labour, with 10 Liberal Democrat, 3 Liberal, 4 Green 2 Independent and 3 vacancies. Labour has controlled LCC since 2010.

3.8. An elected mayor is required to appoint a cabinet comprising at least 2 but not more than 9 councillors and, together with the mayor, they are the local authority's executive. It is the executive who are the decision makers for all matters unless they are council functions under the Functions and Responsibilities Regulations[15] or otherwise assigned as a local choice function or delegated by the mayor to a cabinet member, an officer or retained by the mayor as a mayoral responsibility. The LCC Mayor has appointed nine cabinet members. Their responsibilities cover a number of overlapping and conflicting components. Evidence from a number of witnesses leads to the conclusion that the Cabinet was not a key source of governance in LCC.

[15] Local Authorities(Functions and Responsibilities) (England) Regulations 2000

3.9. In Liverpool, in addition to the nine Cabinet Members, the Mayor has a number of Mayoral Leads, who are appointed by, and report to, the Mayor and, sometimes a specified Cabinet Member to assist in the delivery of the Mayor's priorities. Over the Review Period this number has fluctuated and has included both non-Councillor, and past Councillor appointments. The appointment process for these paid posts is not always transparent. This aspect is discussed in more detail in paragraphs 9.14-9.15 A full list of Special Responsibility Allowances given to councillors over the Review Period can be found here: http://councillors.liverpool.gov.uk/ecCatDisplay.aspx?sch=doc&cat=259

Officer Structure

3.10. Over the Review Period LCC's officer structure has changed many times. At the start of the period, the City Solicitor and Monitoring Officer (MO) was not on the top management team but reported to the Director of Finance and Resources (S151 Officer). There was no post explicitly linked to the Internal Audit function. Instead, it was titled Financial Management System Programme Director. In the Regeneration Directorate (Regeneration), the Divisional Manager Highways and Transport reported directly to the Director but all other Divisional Managers reported via an Assistant Director. The Divisional Manager Planning reported to one of these, AD Planning and Development, who also had responsibility for property matters except Housing.

3.11. Over the next 3 years the structure regularly changed, both in personnel and structure terms. A common feature was overlapping responsibility with titles not really reflecting roles. This was borne out in the documentary evidence where senior officers dropped in and out of projects and decisions were signed off by individuals who seemed to have no responsibility for the project.

3.12. The position was further complicated, following the departure then Chief Executive, with the Mayor chairing the officer team with an interim statutory Head of Paid Service reporting to the Mayor, as part of that team.

3.13. Once the current Chief Executive, Tony Reeves (TR) took up post the top management team stabilised with both the other two statutory officers at the top table, but the rotation continued in the Regeneration Directorate for a little longer.

3.14. At the start of the Review Period a number of direct and professional services, and much that might be considered client-side functions, were delivered by private sector providers. In 2016 street cleansing and refuse collection returned to in-house control, TUPEd into a pre-existing LCC wholly owned company.

This was repurposed and renamed Liverpool Streeetscene Services Ltd (LSSL) to provide the vehicle. The Company Directors appointed by LCC included the Director of Community Services as the only officer who was the client-side Director. Subsequently, in 2018, an element of highways direct service provision was purported to be TUPEd back inhouse from Amey who continued to provide client-side staff under a framework agreement. This is discussed in more detail in Section 5.

3.15. TR took immediate steps to rationalise and improve control, making the MO responsible for Audit and Governance and being on the top team, ensuring the appointment of a new Director of Finance and moving Property and Asset Management (PAMS) out of Regeneration into Finance.

3.16. In the ten years before the Inspection, LCC had externalised and reinternalised many of the services subject to this Inspection. These processes had not always been managed well and both physical and corporate knowledge and culture had been lost at each stage. What was clear was that, in Regeneration, the only way to survive was to do what was requested without asking too many questions or applying normal professional standards. The result of this approach is discussed in subsequent sections of this report.

3.17. The Mayor appoints his or her cabinet and can determine which "executive" decision making responsibilities can be undertaken by individual cabinet members, officers, through joint arrangements with another authority, or by themselves as mayor. Decision making responsibilities on executive matters are otherwise fulfilled through decision making at Cabinet meetings. The usual split of responsibilities between the officers and members is not changed as a result of the use of the mayoral model, nor are any of the record keeping responsibilities. Officers provide options, advice and guidance to the decision makers and implement the (lawful) decisions made as a result. Members work closely with officers, but both must respect the split of roles and not seek to step over that line.

The Constitution

3.18. The same legislation that established the elected mayoral model also introduced a requirement on local authorities to publish their Constitutions. The Constitution is part of the framework seeking to ensure that decision making in local authorities is open, transparent, and undertaken applying proper decision-making principles. It is a fundamental building block of good governance. As well as governing the conduct of meetings it sets out the decision taking structure of the Council and the regulations under which a range of processes take place, together with Codes of Conduct for Members and Officers, working relationships and other detailed matters which together govern the Local

Authority. It also provides the framework for scrutiny and challenge of individual decisions. The legislation requires the Constitution to be kept under review and updated as required.

3.19. The Inspection Team considered the LCC Constitution and how decision making, and scrutiny processes worked in practice, in particular in relation to the areas subject to the Best Value Inspection, namely Regeneration, Planning and Highways. The Inspection Team specifically looked at contract and property Standing Orders, the terms of reference for the Audit and Governance (Select) Committee, Companies Governance Committee and the Complaints Sub-Committee together with issues relating to declarations of interest and codes of conduct[16]. What emerged is described in more detail, mostly in the section on overall governance issues, Section 9 below.

Local Authority Trading Companies (LATCo)

3.20. LCC discloses a number of subsidiary companies which are recorded in Note 37 to their unaudited 2019/20 Statement of Accounts and note 41 to the 18/19 accounts[17].Two of these fall within the purview of this Inspection, Liverpool Streetscene Services Ltd (LSSL) and Liverpool Foundation Homes Ltd (LFH).

3.21. The financial statement for LFH discloses a loss of £0.7m on a turnover of £0.3m in its first year of trading.

3.22. LSSL discloses a loss of £2.2m on a turnover of £37.4m. Previous year's financial statements show that as turnover increases the loss increases. The previous year figures show a loss of £0.8m on a turnover of £31.9m and the year before that, a loss of £0.6 m on a turnover of £25.7m. No dividends are paid.

3.23. The Constitution provides for Council oversight of its subsidiary companies, as distinct from Councillors acting as Directors on their boards, to be overseen by a Companies Governance Committee with the Terms of Reference can be found on LCC's website[18]. This Committee rarely meets. Its last meeting was on 10th December 2020 to consider the recommendations of the Redmond Review. Previously, it met on 14th May 2019 to consider a paper from the working group on Company Governance. This paper was approved but no action has been taken yet to turn their recommendations into constitutional changes and operationalise the agreed position.

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[16] http://councillors.liverpool.gov.uk/ecCatDisplay.aspx?sch=doc&cat=370
[17] https://liverpool.gov.uk/council/budgets-and-finance/statement-of-accounts/
[18] http://councillors.liverpool.gov.uk/documents/s222826/Terms%20of%20Reference%20Updated.pdf

3.24. There is no record of the Council appointing an officer to act as shareholder representative or to agree a shareholder agreement to govern their relationship with the companies subject to this Inspection and this needed to be done irrespective of wider issues. The Inspection Team was advised that such actions had been deferred pending a more strategic review of LCC's holdings but that in hindsight, it would have been wiser to deal with these critical governance issues as a priority.

3.25. Following feedback from the Inspection Team during the course of the inspection LCC at an Extraordinary City Council meeting on 3rd March 2021 removed all Councillors from their company boards and either replaced them with officers or left them vacant.

4. Regeneration Directorate

4.1. The Inspection Team heard from a number of sources that in the early part of the Review Period, corporate management and oversight was sketchy and in Regeneration itself, no divisional management or team meetings took place. Many individuals described the style in Regeneration as intimidating. Little instruction or direction was committed to writing. Instructions were given to undertake specific elements of a task to ensure that the total picture was not evident. It was suggested although bullying was not overt it was clear what would happen if instructions were not followed explicitly. More than one person told us that the Director's style was to see you at your desk, make it clear that what he said was the Mayor's wish and that the file should look right. People who did not comply did not last.

4.2. Not every Officer was put under the same type of pressure or felt it in the same way: The Inspection Team heard from one Officer who did not experience a bullying culture as others did- they were not shouted at or threatened with the sack- but they did feel pressure to behave in a particular way with certain people and could not speak out as they would have wished. Since the arrests, suspensions, and the arrival of the Inspection team a lot of pressure has been removed and they are "no longer wary of every email that arrives in the inbox." The Inspection Team considered that all this testimony was very telling about the pervading tension in Regeneration and other areas subject of the Inspection.

4.3. The Inspection Team noted significant differences in record keeping in different parts of the Directorate. Planning, Planning Enforcement and Building Control files, whether paper or electronic, were clearly full and contemporaneous. It was possible to trace the development of analysis through to decision. The Inspection Team heard from planning officers who drew attention to particular cases where it was considered pressure had been applied to get the 'right' outcome. However, if these cases had not been linked to particular developments that had been identified as being of interest, there would have been nothing specific in the records that would have indicated that this was more than an exercise in normal professional leadership. The evidence on enforcement was much more conclusive. A number of instances were noted where works were recorded as having started on site, either in the absence of consent, satisfaction of conditions or the entering to of planning agreements e.g., Section 106 agreements. In normal circumstances, enforcement action would have been commenced in line with published guidance. Requests for authority to take action were either refused or ignored. Some planning agreements were only finalised when the development was proposed to be sold on and would not have proceeded without a valid consent.

4.4. On the property side, there was no coherent property-based filing system, nor even a project-based case file. It is accepted that documents relating to the early years of the Review Period were complicated by operational and professional property matters being outsourced to a joint venture with Mouchel under the Liverpool 2020 brand name. The subsequent reintegration into the LCC officer structure accompanied by what was described as a brutal service review substantially reduced staff, had a damaging effect on rent reviews and collection still being felt today, and resulted in much documentation being destroyed. Officers who survived the events talked about having to rescue case files from skips, each morning, to ensure they could deal with live matters.

4.5. In almost all the property cases viewed by the Inspection Team, until the last part of the Review Period, there was little original material. The files looked to have been constituted from individuals personal filing systems. When gaps were identified by the team more information was often forthcoming. In particular, it was extremely difficult to trace agreed final versions of Delegated Action Reports (DAR's), the means by which the rules on delegated powers were complied with. The Directorate appeared to have a great reluctance to share the final signed authority with the centre, on the spurious grounds of commercial confidentiality. In a number of instances, the Inspection Team noted DAR's being created to retrospectively authorise deals that were now being finalised, sometimes with the valuation supporting the deal appearing on the file for the first time at this point.

4.6. As a consequence, it is not possible to state that the standards of record keeping required by a statutory authority were complied with.

5. Highways

5.1. Prior to the Review Period, Highways and associated services were outsourced to Amey LG. These services included refuse and recycling, non-statutory street cleansing, grounds maintenance and parks management. In the highways contractual arrangements with Amey LG professional technical services were also included. These services were gradually, and piecemeal, moved back 'in-house' with responsibility for refuse and recycling, street cleansing and grounds maintenance transferring the Community Services Directorate. In 2016 the services were let under contract with LSSL

5.2. In February 2018, following substantial termination of the contract with Amey LG, the highways maintenance services were also transferred to LSSL but remained the responsibility of the Regeneration Directorate. Parks management also transferred to LSSL later in 2018.

5.3. This gradual breakup of the highways services appeared to proceed without plan or foresight as to how they would be managed and delivered in future years. There is no evidence that senior managers understood the risks to the service or what resources, structures, processes, or procedures should be put in place to ensure a good service could be delivered.

5.4. This situation was exacerbated when the AD responsible for the service was arrested and suspended from LCC. The service continues to operate without a coherent business plan, direction or forward vision.

5.5. The majority by value of highway works are by a mix of term and tendered contractors or with mini tenders being used to price specific jobs using contractors already under contract.

5.6. The evidence showed that Highways management were reluctant to make use of the professional expertise of the central procurement team. Further, compliance with LCC Contract Standing Orders was poor. Records show a high level of exception reports (in essence, a breach of the rules remedied by a retrospective approval) together with a significant number of compensation events (claims) which increased the overall costs of the schemes. Where it was appropriate to report back to Cabinet, for example, on overspent Capital schemes, this was just covered in the S151 Officers monitoring report, without any justification provided by technical officers.

5.7. A number of reasons were suggested to the Inspection Team as justifying this position. The team heard that on key contract management stages prior to commencement of works on site, the highways team abrogated its responsibility to 'set up' contracts to the Central Procurement Unit (CPU) appropriate category manager. This means that the highways team has no foresight of Health and Safety risks, environmental issues or works planning. This, inevitably, leads to additional requirements being identified after tender and is a cause of the excessive compensation events claims and payments. Jobs were being awarded without knowing the contractor's workplan being agreed in advance of the commission, leading to costs being increased when the necessary traffic management or restricted hours working was established or insufficient allowance for unforeseen conditions. Of course, had the estimate included for these events in advance they could not have been awarded under the relevant Financial limit rules. Overall, the culture appeared to be rule avoidance and a specific example of this is identified later.

5.8. Overlying all of this was the Mayor's insistence that his concept of social value was best achieved by employing contractors with a Liverpool postcode base. When contractors without that qualification won in competition this normally provoked a request for review. The documents reviewed record a complaint to the Mayor from a losing local contractor resulting in external consultants being called in to review the process. Their report revealed some minor irregularities but nothing worthy of intervention. However, the Mayor continued to express concerns. In fact, the central procurement process, if followed properly and followed up on with contractors after award does show how legally compliant social value can be delivered. The practice in Highways did not do this.

5.9. Having said that, there are concerns about how some of the maintenance contracts were awarded. The Inspection Team examined the process for the latest series of term contracts. It was noted that the detailed evaluation at bill of quantities level showed a difference on the sample calculation of around £8000 in £600,000. When grossed up by the percentage addons the numerical difference became much greater, and the award was made on this basis and it was not questioned. In reality, a minor change in the sample calculation could have led to a different outcome. There were no records available to us to check that the sample calculation was predetermined.

Dismantling of the Churchill Way Flyover

5.10. This was a major civil engineering project, let under the NEC3 framework, and was procured by the CPU in mini competition. From our interview it is understood that the Highways team did not know what the Health and Safety plan for the project was prior to commencement on site. At the point of works starting an urgent appointment of safety consultants, Safety Support Consultants (SSC), was instructed. SSC had no previous relationship with the Council or the Highways team or their professional technical consultants. Not only was this in contravention of the Construction Design Management regulation but also this action exposed the site teams to considerable Health and Safety risk. It also increased the commercial risk to the Council of budget over run and additional compensation event claims.

5.11. SSC is a private limited company incorporated in July 2016. Amongst other services it provides Health and Safety consultancy, including to construction sites. As noted above, it has never undertaken any work directly for LCC and is not on any approved list. For LCC to use its services, unless it was below the exemption limit, would require a waiver of Contract Standing Orders.

5.12. In mid-2019, Council officers in Highways requested Amey, who at that stage were still providing a range of professional services via the residual framework contract, to appoint SSC to provide client -side H&S support. Initially, it was suggested that SSC would review in-house design from a CDM perspective and do random site audits. Amey asked why LCC would not procure the service direct and why SSC? as they had no published highways experience. It would also have been possible for Amey, given notice, to deploy their in-house resource or use consultants already known to them.

5.13. The files record the assistance given by officers to SSC to enable rates to be set for the task on the basis that this information should not be disclosed to 3rd parties. Amey were given a direct instruction to appoint. From the outset, there were relationship difficulties on site and issues relating to perceived over resourcing with claims to match. From the evidence available on file, the quality and content of the output provided to the client-side did not justify the scale of contract payments. Although the arrangement was announced as lasting only 4-6 weeks, the engagement came to an end after 4 months with expenditure of the order of £250,000, once the CPU became aware and pointed out the availability of framework contractors providing the same service at less cost. This episode is an example of the approach taken by officers to circumvent the control systems.

5.14. After examining responses to questions raised and interviews with the appropriate managing officers for LCC Highways Services, the Inspection Team found that there is no overall direction of the service and that management of the capital works services is dysfunctional and without ‘ownership’ of operational strategy and delivery. The service was split into two key areas of management with sub sections from these. The two principal sections are Capital works and Core Services (Maintenance works). Each area is led by an operational manager.

5.15. Dealing with Core Services the Inspection Team found that there is a framework in place to cover most service delivery needs. The framework is under review and will be replaced under a new procurement. Most works under this contract are procured against agreed schedules of rates by direct award with DAR or Cabinet report being processed before executing contracts. The payment mechanisms for this framework are well developed and include checks and balances from both the CPU and suppliers prior to submission of invoices. Spot on-site checks are also made to verify work done and value.

5.16. The Inspection Team noted missed opportunities to plan capital works, to control spend against budget and to derive better value from its contracts. Poor contract management and/or lack of ownership of contracts and the service leading to excessive claimed Compensation Events, lack of market and supplier relationship management and poor specification of contracts and frameworks.

5.17. Set against this was a welcomed category management approach and support from the CPU.

5.18. The Inspection Team also found that the relationship between the Core Services and Capital Works service lacked structure and process. For example, when questioning the managers of each service, the team were unable to establish how schemes to deliver repairs to potholes became too onerous and were handed over to the capital works team for further work under capital works programme budget i.e., there are no clear criteria for assessing revenue and capital works.

5.19. Capital works gave the greatest concern to the Inspection Team. Since the suspension of the Assistant Director, management of the service has been placed with 'operational' engineering staff. Of particular concern are the low contract management capability leading to loss of value for LCC and giving rise to the following concerns: -

- Poor specifications for Mini competitions under the framework leading to excessive compensation event claims from contractors
- Inadequate health and safety planning prior to commencement of works
- Inadequate commercial risk assessment that maintains value driven outcomes of contracts
- Lack of understanding of the commercial lifecycle and the role to be played in it by the Highways team.
- Lack of visibility and understanding of supply chains

The Sustainable Commercial Life Cycle

5.20. Although we noted the increased support provided by the CPU, it will be important for the Highways team to have greater understanding of the commercial life cycle and to be fully involved in the development and management of its supply chains and markets. There is no evidence of the highways team either having full understanding of their key suppliers or active engagement as to market and supplier health. There is no evidence of using lessons learnt from each major contract completion to improve either technical or commercial outcomes of subsequent contracts. Health and Safety must be gripped and put at the top of future risk assessments with clear ownership by contract managers from the commencement of procurement processes. These three elements must be embedded in the Highways procedures to support CPU in procuring better value contracts and that value must be brought to fruition through effective contract management that understands the criticality of commercial value from contracts. To improve the procurement of construction contracts it is expected that the CPU are adopting the principles of the recently published Construction Playbook[19]. Is shown in any improvement plan as a result of the Best Value Inspection. It will be equally important that the Highways team is fully familiar with these guiding principles so that they are applied throughout the contract commercial lifecycle.

5.21. To ensure that the initial contract scheme outcomes are delivered it will be important that the design and procurement remain aligned with business case objective. The introduction of a gateway approval process will ensure that there are sufficient checks and balances as projects develop and that value is maintained.

5.22. In the Inspection Team's judgement, the Highways service needs to be completely restructured to ensure clear lines of leadership guided by the principles of the Construction Play book referred to earlier and appropriate business planning and contract procurement and management principles. It may be that the only way to achieve this in the short term is by partnering with another authority.

Liverpool Streetscene Services Limited (LSSL)

5.23. Of greatest concern to the Inspection Team was the relationship between the core services team and LSSL.

5.24. LSSL was established as a LATCo in March 2016. Its primary functions at the time of inception were to deliver street cleansing service, environmental services (refuse collection and recycling), grounds maintenance and parks.

5.25. In January 2018 LCC and Amey LG mutually agreed to early termination of the highways maintenance service contract. The intention for the service was to transfer the service, with a new contract, to LSSL. At the point of transfer LCC did not have a formal contract agreed with LSSL. This delay in formalising the arrangement was to give LCC time to consider the longer-term agreements for the services. In addition, LSSL presented no working plans for how the service would be delivered or how the TUPE transferred staff would be assimilated into the business. Officers expressed concern about this arrangement, pointing out the frailties of the TUPE transfer of staff to LSSL. These concerns had not been fully disclosed to the Inspection team and have only come to light by interviews with former LCC Officers involved at the time. To date no formal contract has been put in place and rates charged by LSSL have not undergone competitive or best value benchmarking. The current total spend with LSSL for core highways services is £4.3m. The LCC operational manager stated that because of the requirement to use LSSL there is a lack of control over expenditure making the management of budgets impossible. The

[19] https://www.gov.uk/government/publications/the-construction-playbook

relationship with LSSL must be either formalised or curtailed for the service to be able to perform more effectively.

5.26.These services have been provided by LSSL on a cost-plus basis. Acting under Teckal rules, these costs have not been benchmarked or challenged since 2018. As a consequence, this puts increasing pressure on client-side budgets, it is anticipated that the budget for 2021/22 will need to be increased by £2m to maintain current work schedules of LSSL. This prevents the highways teams from reducing the backlog maintenance liability and ensuring that residential roads across the city do not continue to fall further into unacceptable states of disrepair.

5.27.The board of LSSL comprises a chairperson, currently the interim Mayor, and one other Councillor. A third Officer Director was appointed initially (see paragraph 3.14), but the position has not been appointed to since the untimely demise of the person appointed. LSSL's Chief Operating Officer, Accountant and HR Business Manager support Directors at board meetings. It is of concern that LSSL board meetings are both infrequent and do not discuss key reports which would enable the Directors to understand how LSSL is performing in both physical and financial terms. There have been only five quorate meetings between December 2019 and January 2021. Board meeting should occur at least every six weeks and, in the current pandemic condition, should meet at least monthly.

5.28.LSSL's 5-year business plan was last published in 2018, some two years after setting up the company and, after commencement of contracts for the service described previously. Since 2018 LSSL has not revised this business plan, although the terms of reference for the Board requires it to review and roll forward the business plan annually. No action or analysis has been reported to the Board even in light of the pressures caused by the pandemic. It is clear that the reporting arrangements cannot ensure the Directors are able to fulfil their roles and responsibilities envisaged by legislation. As it was not evident that appropriate training had been provided to Councillors acting as Directors, it may be that they are unaware of the personal risks they are running.

5.29.As noted in paragraph 3.24 it is a major concern that no shareholder agreement exists between LCC and LSSL. There is, therefore, no appointed shareholder representative at Board meetings. The consequence of this is that LCC have no representative to make binding decisions on its behalf, appears not to set financial targets nor to require compliance with key elements of LCC activity which would deliver value for money. Finally, the Inspection Team noted that it was possible for Councillors with no apparent role in the management of LSSL to intervene in its HR practices. This could not have happened in the core of LCC and should not have happened in LSSL. It is therefore hard to see if this operation is truly being operated as a company.

5.30. LCC needs to consider and regularise the position as a matter of urgency before reviewing whether these activities are best operated through this structure.

5.31. It is understood that LFH, LCC’s housing company is being wound down as it is no longer being funded to achieve the goals identified when it was set up. A wider review of all LCC’s companies is therefore indicated as there is no evidence that the issues highlighted above do not apply more widely.

6. Property

Disposals

6.1. As well as the best value requirements for property disposals summarised in paras 2.16-2.19 above, property disposals in LCC are governed by Rule 13 of LCC's Contract Standing Orders. Although LCC's Standing Orders generally have been updated on a regular basis over the years this particular Rule has remained in force throughout the whole period examined by the Inspection, although with title changes as the Council has changed Member and Officer structures, and remains current today.

6.2. Key extracts from Rule 13 are set out below.

> *'13.1 In disposing of Council assets, including land and interest in property, the Head of Business Unit/Assistant Director must seek to obtain the best consideration for the Council in compliance with all relevant legislation and Council policies…'*
>
> *'13.4 For disposals or sale of land or property where the income receivable is greater than £5000, the highest tender may be approved and accepted by the Director …, in consultation with the Cabinet Member…. '*
>
> *'13.5 Disposals (whether by lease, license or sale of freeholds) of the type of land, to the persons, or in the circumstances set out below shall be by way of negotiation subject to compliance with all relevant legislation by private treaty unless the Director… recommends disposal by way of public auction or public tender: …*
>
> *(viii) Disposals of property to a developer of adjoining land who has an approved scheme and requires such property to complete the scheme.*
>
> *(ix) Disposals of property to developers who are proposing schemes that will have a regenerating effect on the City and investment, which, in the view of the relevant Director in consultation with the relevant Cabinet Member and the Cabinet Member for Finance and Resources, could be prejudiced by inviting tenders.'*

6.3. From this it is reasonable to conclude that: the Director of Finance had a veto over agreeing deals done under delegated powers and could insist that matters were reported to full Cabinet; that a disposal to an adjoining landowner could only be dealt with under delegated powers if a scheme with a valid planning consent existed; and that to qualify for the exemption under Rule 13.5 (ix) required some sort of analysis which needed to be shared in some formal way with two Cabinet Members or the Mayor and Cabinet

Member before determining not to invite tenders.

6.4. Rule 13.4 also refers to the Scheme of Delegation. The Director of Regeneration had delegated powers (subsequently included within the Director of Finance's delegations when PAMS moved Directorates under the TR changes) to dispose of property etc. where the disposal represents best value subject to prior consultation with the Mayor and relevant Cabinet Members and the decision being reported to the relevant select Committee within one cycle. The Inspection Team do not accept that this delegation must override Rule 13 in its entirety as only 13.4 refers to the use of delegated powers. Even if it did, the requirements to consult before use of the power needs to be documented and there is no evidence that this was done.

6.5. At the start of the Inspection, the Inspection Team called for a schedule of all disposals completed from 2015 onwards. Over 65 specific cases were identified for more detailed end to end examination. These were selected because of the method chosen for securing an offer i.e., the exemptions referred to above; the particular policy initiative which was relevant i.e., Homes for a Pound; or because the sites could be linked to the Police investigations. Officers preparing these schedules were initially confident they had captured all the relevant disposals. However, as the Inspection progressed more disposals came to light, in part because they had been linked to wider schemes involving land swaps with consideration involved and in part because of the lack of a coherent record keeping system noted earlier.

6.6. Each one of the disposals examined had some sort of issue and it is important not to necessarily judge on the basis of perfect hindsight vision. As the Inspection progressed, though, what became a depressingly familiar pattern emerged. The Inspection Team have chosen to illustrate some of this using the case studies set out in part 12 of this report.

6.7. In case after case, the Inspection Team noted that there was no attempt to seek any form of market test. Many instances were noted where LCC held the freehold of, often a former industrial or commercial unit let on a long leasehold with a restrictive covenant on use and with a low or peppercorn ground rent. Sometimes valuations were prepared on a number of bases, but rarely on the basis of a likely alternative planning scenario. The concept of preparing an informal planning brief was absent. Alternative valuation scenarios were also prepared which discounted the likely highest valuation. These valuations were almost entirely prepared in house. Not every site started here, some did not have a valuation recorded on file until it was needed to certify the proposed deal.

6.8. More often than coincidence would allow, the person/company who was found at that point to have acquired the lease was drawn from a very restricted pool. Heads of terms were agreed, certified as being best value reasonably obtainable in the marketplace and recorded as being authorised, although it did not fulfil the requirements of the delegation to enable them to rely upon it and authorisation should have come from Cabinet. There was no evidence of the analysis and consultation with Members that the Rules provided for. This was neither set out in the Delegated Action Report (DAR) itself nor did the file contain any correspondence to evidence compliance. It was reported that the Director did not hold Cabinet Member briefings, as was the practice in other parts of LCC, so there appeared to be no formal mechanism to record any advice that might have been sought or proffered.

6.9. Solicitors on both sides were instructed. LCC often did not have the resources to handle the number of cases in process so outside solicitors were commissioned. It was noted that this was commonly done directly by the Regeneration Directorate without any involvement with the City Solicitor. This meant that the City Solicitor never had oversight of the scale and scope of activity and could never ensure a consistent approach which protected LCC's interests and ensured compliance with Standing Orders. Because the client was seen, by the outside Solicitor, as being whichever Regeneration officer was the lead, advice on the advisability or risk of agreeing alternative terms proposed by the purchaser was not considered in the round, just doing the deal mattered.

6.10. Step by step, the deal outlined in the Heads of Terms was undermined or cut back. Very often, when planning sought to agree routine S106 agreements as part of the planning process, the costs of this were sought and usually agreed to be deducted from the consideration. Overage clauses were trimmed back to effectively make them unenforceable. Pre-emption clauses, designed to allow LCC to buy back the property if development did not proceed, were undermined and when proposals were put in place to structure the deal into a Special Purpose Vehicle, not carried through to have an effect.

6.11. At the point of exchange, it was often necessary to recertify the value as the existing DAR did not cover the new terms. This was always forthcoming. From time to time, both legal and finance officers raised concerns, but no-one thought it correct to call a halt, reflect on where the deal now was and whether it was still right to continue. Instead, the files were full of, 'what do we now do to get this deal over the line.' Securing LCC's best interests were not on the agenda.

6.12. When officers tried to resist, implied threats were employed. The Allerton Golf Course lease extension is a good case in point.

6.13. Valuation of golf course interests are very difficult. There are few comparables, and most valuers do not have sufficient experience to be able to properly certify a valuation. For this deal LCC employed CBRE who have sufficient specialist experience to undertake this commission. For the proposed lease extension and redevelopment of the clubhouse and site. CBRE prepared a full valuation appraisal on a capital premium basis. Subsequently, LCC at service Director level decided that an income stream was preferable. Negotiations were commenced to convert the deal into that format. This led to a number of clauses being promoted to LCC that significantly disadvantaged the Council. When these were challenged, the solicitor acting for the proposed lessee made it clear that if terms were not agreed the delay and blockage would be raised the next day at a lunch that the developer was holding with the Mayor and the Director. It was seen by both the LCC's retained solicitors and the client officers to whom this correspondence was copied as an implied threat.

6.14. No records exist showing the declaration of this alleged hospitality. LCC conceded the point to let the deal go through.

6.15. During these negotiations CBRE were kept abreast of the position. Eventually they wrote to LCC saying that the position had been reached that they could no longer certify that this was best value. It was suggested to the Inspection Team in interview with the client officer that a meeting had taken place where this position had been retracted but also conceded that there was no record of this discussion nor any further correspondence. More importantly the DAR was drafted to say that CBRE had been appointed to provide specialist valuation advice on the deal. The next sentence reads that PAMS certifies that these terms comply with best value. In the Inspection Team's view, no PAMS officer, who was unnamed in the report, could have the experience to provide this certification.

6.16. In many instances, in the files, it has been hard to establish what deal actually was approved and who authorised it. There is evidence of retrofitting an approval to the final contract. As one of the case studies makes clear, getting an authority in advance was not always done and rectifying an authority once it was known that the terms would not be delivered was not a priority.

6.17. It would have been open to both finance and legal officers to have required such major changes to have been considered or reconsidered by Cabinet. This would have exposed such schemes to detailed review and required explanation on the face of the report as to why the deal had changed. Proper democratic scrutiny would have been achieved and, if the deal continued, however poor it might seem in hindsight, the elected representatives concerned could have been held accountable at the ballot box. Even listing the various deals as key decisions as they went through might have alerted Councillors to what was going on.

6.18. These typical events often relate to projects where there might have been an opportunity to pray in aid the provision of Rule 13.5 (viii) – dealing with adjoining land. It clearly cannot apply when the adjoining land is across a highway which is not proposed to be closed or bridged. It cannot apply when there is no approved scheme at all but the Inspection Team saw disposals where that Rule was used in both situations.

6.19. The Inspection Team reviewed the latest tranche of Small Site disposals late in the Inspection period. This came about because this project had been omitted from the schedule of disposals provided as a result of the initial document request. It was reviewed because it had been missed so was seen as an exception. The project was being managed by two graduate surveyors who were clearly apprehensive about how their processes would be judged. They had been allocated the project before the suspensions and arrests and then allowed to manage the process with little intervention.

6.20. It is worth reporting here because it was an example of what had been looked for in a normal local authority. The record demonstrated understanding with both professional practice and LCC procedure. The decision record was properly prepared and documented. They had recognised the risks to LCC in releasing all the sites in one tranche to the developer that had offered the best price and decided to release each one only on satisfactory completion of the current site. The records were not perfect but were an example of what good professional practice in a local government setting should look like. If this is the future, it is possible to see a recovery plan taking hold.

Property Asset Management Services (PAMS)

6.21. From the inspection process we noticed that the narrative for the Property Asset Management Service (PAMS) falls into two distinct periods:

- Pre 2018 under the Regeneration Directorate and
- Post 2018 under the Finance and Resources Directorate

6.22. In 2018, TR took the important decision to take the PAMS team out of the Regeneration Directorate and place them in the Finance and Resources Directorate where their development would go unhindered. Each of these periods is examined to highlight how property has been misused under the management of the Regeneration team and how this contrast with the more Corporate Property approach taken in recent times.

Pre 2018

6.23. Under the management of the Regeneration directorate the PAMS team lacked senior direction and support to use property assets strategically to deliver sustainable regeneration projects that supported the corporate objectives of LCC. More commonly, the Regeneration Director used property assets as ‘disposable’ assets at best to meet goals only of the Regeneration team. This was with apparent disregard to the strategic importance; capital value or social value of the properties being used.

6.24. The PAMS team also came under pressure during this time to save money for the department. This resulted in a significant head count reduction from 52 FTEs to 26 FTEs. This number was further reduced in 2017 to 17 FTEs. The pressures noted throughout the Inspection Period resulted in further vacancies occurring. This reduction in numbers compromised the team’s ability to function as an effective property management department and key posts, as well as estate knowledge, was lost.

6.25. As example of the effect of this reduction and capacity in the team a key post lost was that of Rent Officer. This affected the management of the ‘let’ estate and timely collection/payment of rent. Without this role in place, LCC continues to have a significant outstanding rent debt of c£7m. This would have been difficult to collect before the pandemic but now it is likely that significant write offs will be necessary.

6.26. To support the PAMS team and to augment the low capacity available, the team often relied on external support for valuations and technical advice. They engaged local and national property specialists on an ad hoc basis.

6.27. The Inspection Team has seen evidence that, in many instances, the valuations provided by external expert surveyors was dismissed or ignored by the regeneration team when agreeing final terms on disposals or acquisitions of property. Similarly, the technical advice provided was also not taken into consideration when finalising transactions.

6.28. As many of the transactions were carried out using DAR's it appears that the external professional advice and valuations were 'used' to gain one-time approval from Cabinet. Between this initial approval and finalising the deal many changes may have taken place that have not been subject to scrutiny, approval or amendment to the agreed delegated authority provided by Cabinet.

6.29. Both Members and other Officers involved were blind-sided by these actions.

6.30. The PAMS team played an increasingly low-level role in these property transactions and were often side-lined. So too were the finance, central legal and scrutiny teams. This is evidenced in the Case Studies included in part 12 of this report.

6.31. This way of doing business not only reduced the value of properties and was a dereliction of the Council's duty to achieve best consideration for disposed properties but also, in some cases, cost the Council in external, legal, and valuations appointments. Moreover, the loss of s106 income (not paid by developers) to support the developments proposed went unchecked, further providing evidence that best value was not being achieved.

Post 2018

6.32. Since the appointment of a new Chief Executive in July 2018 significant improvements have been made in how LCC manages its property portfolio. Most important of these changes was the move of the PAMS from the Regeneration to the Finance and Resources Directorate. Under the management of a newly appointed head of service, this significant move has allowed the PAMS team to take stock of its processes and procedures. They have developed and published plans that are incorporated in the corporate Medium Term Financial Plan. However, the plans that have been published are considered only short term and are:

- The Corporate Asset Management Plan 2020/21
- The Commercial Property Investment Strategy 2020/21

These therefore cannot be considered as substantive in the MTFS and longer-term plans and strategies must be developed to support the LCC's corporate financial strategies.

6.33. In October 2020 the PAMS team engaged CIPFA property consultancy to appraise the health of the management of the Corporate Property Estate. The resulting report set out a number of recommended work streams that will support LCC and the PAMS team to adopt and implement a Corporate Property management approach. This will be a significant move and, if implemented fully, will be catalyst for sustainable and best value development across the city. However, the support for Corporate management of LCC's property portfolio is not clear from the current Asset Management Plan. It would be expected that, as part of an improvement plan for PAMS that a revised 5 year Business Plan and a 5 year Corporate Asset Management Plan will be evident.

Opportunity and Future Proofing the Service.

6.34. It was noted that the department uses a number of data capture systems, the principal of which are Concerto and Tribal systems. The opportunity presents itself to update how data is used to forecast property uses, costs and values to LCC and to improve property decisions beyond a 5-year horizon.

6.35. How data is used to support the Corporate Property approach will be key to ensure that the team can fully support decision making by property occupiers in the future. The implementation of an integrated workplace management system will help both property users/occupiers and Members to better understand the strategic goals for the use of property and will give better insight to the PAMS team on:

- Facilities Management and Estates Compliance
- Better space utilisation reducing property costs
- Better value from capital projects
- Better maintenance and resource planning

7. Procurement

LCC Central Procurement Unit

7.1. LCC Central Procurement Unit (CPU) has made significant changes to how it procures goods and services for the departments subject to this inspection. In particular, the introduction of category managers and business unit contract management support is a meaningful step taken.

7.2. However, it was noted that a number of important issues remain for urgent resolution:

7.3. Contract change and contractual compensation events valued at under £5,000 are currently the responsibility of site level management sign off. Until the restructuring of the Highways department is complete it is considered that this additional spend must be brought under control with greater scrutiny from the designated contract manager in the CPU.

7.4. The Premises Management Unit (PMU) currently does not have in place a contract for Hard FM service. Significant spend (£23m) is procured by spot purchase orders, in the case of PMU this is entirely by exemptions. This is unsustainable in a number of ways:

- No control over expenditure and budget management
- Significant risk of non-compliance of the estate
- Lack of data collection and collation to monitor; cost in use of the property portfolio, value of backlog maintenance liability, accurate forward planning of PPM etc.

It is therefore essential that CPU procures a Hard FM framework or makes use of an appropriate existing national framework to urgently recover this situation.

Future Procurement

7.5. It should be noted that this is an opportune time to make advancements in commercial procurement for LCC. These opportunities exist because: the exit from the European Union has triggered rules reform for public sector procurement. A Green Paper setting out the reforms is under development; consultation on the Green Paper closed on 10th March 2021. It is understood that TR has been involved in the consultation process.

7.6. For procuring units the Cabinet Office is developing bespoke training packages for local authorities to assist in preparing for the implementation of reforms. Cabinet Office will fund the training programme to be rolled out from 2022.

7.7. The National Procurement Policy Statement (NPPS) is anticipated to be published in March 2021 and this will set out Government's strategic national priorities for procurement. This will include further guidance on social value, effective delivery and enhancing commercial procurement skills and capability. The NPPS will be underpinned by legislation which will require larger contracting authorities (with an annual spend of over £200m) to publish pipelines by April 2022.

7.8. The LCC CPU should take advantage of the training programmes being provided and ensure that its forward plan embraces the principal policies that will be set out in the new legislation and guidance.

The Outsourcing Playbook and Construction Playbook

7.9. Although it is recognised that the LCC CPU has made significant advances in recent years it was noted that further improvements could be made that would make a sea change in its effectiveness in the future. In support of the rules reform already mentioned the adoption of the principles of the Government's Outsourcing Playbook[20] and Construction Playbook[21] will have a profound effect on how procurement works in the future. The roll out of these two Playbooks has the full backing of government, industry, suppliers, professional bodies and the Local Government Association. Training in their practical application is available through the LGA.

Applying Social Value in procurement.

7.10. In September 2020, a new SV Framework for central government departments was agreed and released. Developed by the Department for Digital, Culture, Media, and Sport (DCMS) together with the Cabinet Office and led by a prominent Liverpudlian, Claire Dove CBE, this framework paved the way for the inclusion of SV as an evaluation metric in future procurement processes. This was confirmed by the release of PPN 06/20 and further endorsed through PPN11/20[22]. In short, this requires all contracting authorities to include at least 10% evaluation score to SV. This is mandated and will be incorporated in the National Procurement Policy Statement and Rules Reform green paper currently in consultation. Some departments have opted to raise the level of measure to 20% of evaluation scoring.

7.11. Without demonstrating SV in tenders, for the first time since its introduction, suppliers, whether in house or external private sector will be evaluated out of procurement competitions.

7.12. In general, through engagement with Officers and Members, the Inspection Team found that there is a stated passion for delivering social value to the citizens of Liverpool. However, the application of SV assessment of contracts

[20] https://www.gov.uk/government/news/updated-outsourcing-playbook
[21] https://www.gov.uk/government/publications/the-construction-playbook
[22] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921437/PPN-06_20-Taking-Account-of-Social-Value-in-the-Award-of-Central-Government-Contracts.pdf

and property deals that were witnessed did not accord with this. Indeed, the myopic view that suppliers of services to LCC must have a Liverpool postcode, as stated in interview by the Mayor, demonstrates, at best, a lack of understanding of the Act and at worst, an attempt to stifle healthy competition in tender processes. The adverse effects of this approach are demonstrated in a number of cases examined.

The Opportunity

7.13. LCC now has the opportunity to demonstrate to its citizens, investors and business communities that social value is at the heart of all that it achieves across the city.

7.14. By reviewing and restating its approach to SV, LCC can pledge to its stakeholder communities a consistency in how it intends to evaluate and embed SV in its service delivery. In a move away from the requirement for a Liverpool postcode for contract suppliers LCC will give clear signals that it is open for business with an emphasis on social value creation''.

How can this be achieved in Liverpool?

7.15. There are many tools and systems that could be used to develop a Liverpool Social Value Model. Working with organisations such as LGA and central government will provide LCC with support and capacity to re-invigorate its SV platform for change.

7.16. In the short term, two key circumstances, the recovery from Covid 19 pandemic and the adoption of rules reform brought about by the exit from the European Union, will need to be addressed. In terms of SV supporting the local community to recover from Covid19 will be of paramount importance. Guidance exists, in the form of a PPN06/20 and the theme "Recovery from Covid19"[23].

7.17. Revised procurement rules are currently at consultation (Green Paper) stage and will give further guidance on procurement procedures to be adopted.

[23] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921437/PPN-06_20-Taking-Account-of-Social-Value-in-the-Award-of-Central-Government-Contracts.pdf

8. Legal Services

8.1. The Legal Service in a local authority should provide the essential corporate and operational legal advice and support for the authority's departments and also have developed systems and processes to ensure that it is seen as the first port of call for legal support. The Inspection Team found dedicated, enthusiastic, and very able lawyers working within LCC. However, the internal resources for the areas under inspection were stretched leading to the outsourcing of large volumes of work and a pressurised work environment.

8.2. Like in many local authorities, legal services in LCC were significantly cut from 2010-14. However, over the Review Period their resource and shape has remained reasonably stable. Their position in LCC has changed to make them more visible and central to the Authority's activities. In 2016 having been previously located in a different building, Legal Services moved to the Cunard building to sit alongside the service departments. Also, as noted in the introduction, in 2018 TR moved Legal Services and the City Solicitor/MO from the S151 line management chain to report directly to him.

8.3. There are 6 teams of varying sizes within Legal Services, each with a Principal Solicitor undertaking operational leadership. The majority of the work in scope of the Inspection was completed by the Regeneration and Development Team, Regulatory Team and the Contracts and Commercial Team. The Development Team has two qualified lawyers and two skilled legal assistants to cover a substantial amount of work, in 2017 LCC made 44 disposals of property and maintained an average of 35 disposals a year over the review period. However, Legal Services had a reputation for being 'slow' and struggled to keep up with the volume of work.

8.4. The one notable exception to the stability within Legal Services was the departure of the Assistant City Solicitor in 2018 who has yet to be replaced. Senior management roles of this nature are integral to the effective running and prominence of a service. While two of the Principal Solicitors have provided interim cover, the Inspection Team heard that in the absence of this position Legal Services views were not always heard or were consciously ignored when raising valid concerns with other departments. In addition, the vacancy also places additional stretch on the service and reduced the ability of legal services to strategically forward plan.

8.5. The apparent lack of capacity has had two particular consequences, firstly large parts of legal work was outsourced, one Officer estimated that 20-25% of the Regeneration legal work was outsourced. The Inspection Team found that while there was a central process for procuring legal work which was championed as the best method, LCC's CSO allowed client teams to procure external legal support directly without involving Legal Services. When outsourcing whether through the legal team or otherwise, Officers often procured at speed and went to legal firms they had worked with before creating a small pool of preferred firms and solicitors. It led to occasions where both LCC and developer were using the same firm. The Inspection Team were also informed that on occasion the first time Legal Services became aware of outsourcing was when they were required sign off a DAR or to witness the Authority's seal. Securing external legal advice and support is costly and it may be that addressing in house capacity issues through the appointment and critically, the development of internal resources would be more cost effective and beneficial to LCC.

8.6. It is also notable that such outsourcing resulted in an absence of copies of external legal files and formal documentation including, for example, leases for completed transactions being part of the LCC records although this is now being addressed. The Inspection Team were also told and saw evidence of external advice being secured to challenge the advice of Legal Services. Linked to this it was noted that challenging a client department's instructions was commonly ineffective, particularly those from Regeneration.

8.7. The second consequence of the lack of capacity is that in 2016 it led to Regeneration creating a new solicitor post (at a higher grade than Principal Solicitor) to help speed up and smooth legal processes. The job went to a candidate from Legal Services. Although there was some agreement between Legal Services and the successful candidate about not signing off reports on behalf of Legal Services, for example, there was no professional responsibility to the Legal Service or the MO. The success of the arrangement from the perspective of Regeneration is apparent because this approach has been repeated, and a further solicitor appointed again with line management in Regeneration. The creation of these posts moved the focus of legal support from Legal Services and diminished proper oversight of the legal advice to LCC it also reduced the visibility of the land transactions to the in-house legal team.

8.8. Another area of concern is that it was common practice for internal Legal Services to be presented with reports for "sign off" seemingly at the last possible moment with emphasis on the political support behind any proposal. This introduced unacceptable pressures on the internal team, impacting on the robustness of scrutiny, and increasing the reliance and trust placed (or potentially/occasionally misplaced) on the information provided by Officers submitting the report.

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8.9. At LCC the MO is also the City Solicitor but there is no specific designation of that role as the Solicitor to the Council in the constitution. In addition, the current delegations to the City Solicitor in the Officer Delegation Scheme are limited and do not reflect the significance of the role and its responsibilities or the work and activities that this officer and their team is, in fact and necessarily, undertaking.

8.10. The LCC recovery plan will need to build the prominence of Legal Services, and include investment in senior staff, increasing oversight of outsourcing and reducing reliance on external firms for non-specialist matters. Any review and update of the Constitution and SO should provide clarity about the full responsibilities of the City Solicitor and MO role for the benefit of both members and the public alike.

9. Overall Governance issues

Behaviours

9.1. The 2018 LGA Peer Challenge report into Liverpool City Council found that "Councillors have strong views and sometimes they are expressed in ways that are not the norm in local government". The team heard that it could be difficult for Members to challenge at meetings and often the challenging behaviour came from the Mayor and prominent Councillors. The evidence indicated that both Councillors and Officers had a limited understanding of declarations of interest and hospitality registers - these important documents that foster transparency. It was clear that they were not monitored, were often incorrect and rarely updated to reflect changes in circumstances. It was noted that the majority of Councillors' declarations of interest were updated since December 2020 after the announcement of the inspection. Gifts and Hospitality registers appeared not to have been updated until midway through the Inspection Period. Despite evidence to the contrary, the registers recorded that the Mayor and many Members, including Cabinet Members had not received any registrable gifts or hospitality for several years, or alternatively, Members simply did not comply with the requirements of the Code of Conduct. Although significant updating took place while the Inspection Team where on site when it became known this was being reviewed. Officer declarations were hard to examine and cross check. They were not subject to a requirement to update and were not discussed as part of routine management action.

9.2. Overall, there was a lack of appreciation of the Nolan principles and the requirements of the Members Code of Conduct. Linked to this there was a lack of understanding in how complaints against Members were handled. Approximately 120 complaints have been received over the Review Period, but the vast majority have not been validated or considered appropriate for any further formal action by the MO. Many have been addressed on an informal basis, and only one complaint has resulted in a determination by the Complaints Sub Committee and the Member being censured in a meeting of full Council. LCC have no regular meeting of an ethics or standards committee (it last met in January 2012) and no way of reporting any monitoring information on complaints. When the recent LGA model code was considered, it was dealt with at a cross-party Member working group on Member training rather than a formal body that might recommend to Council that its provisions be adopted.

9.3. Members were often confused about processes and who the complaint was being handled by, the Authority or the Party. The Inspection Team noted a number of examples where there was evidence of pecuniary advantage being obtained indirectly. These included persuading fellow Ward Members to authorise funding to an organisation where the individual worked or provided consultancy. The Officer response to this was to devise and implement processes which would make it more difficult for Members to take these decisions. There was never a report published or shared with Members which set out the correct behaviours expected. By not publicly addressing breaches in the Code of Conduct, LCC prevented members gaining a wider appreciation of the Nolan principles, the requirements of the Code of Conduct -and what is proper Member behaviour. It also prevents any issues relating to Member behaviour from being visible to the public at large.

9.4. There is also confusion over the appropriate roles of Members and Officers. From the evidence provided it is clear that the Mayor sought to undertake a much more active and direct role in the running of the Authority than the arrangements as set out in the Constitution provide for. Following the departure of Chief Executive in 2016 the Mayor, according to LCC's website, was responsible for the "day to day running of the organisation". While he did not and could not have the statutory title of Head of Paid Services, he chaired management team meetings and sought to cover much of the Chief Executive's responsibilities. The prominent role of the Mayor is evident from the 2018 LGA peer review which concluded that "there is more that could be done for the council to act more corporately and for officers to understand the roles of *serving the Mayor* and the whole of the council." (emphasis added) While TR has firmly stepped into the Chief Executive role, we have heard testimonies that this confusion over the boundaries of responsibilities still exists and is not confined to the Mayor.

Scrutiny

9.5. It is against the background of the behaviours outlined above that scrutiny takes place. In LCC there are 9 scrutiny committees each with their own area of responsibility and 4 standing task groups as well as ad hoc scrutiny panels. A list of the committees and task groups and their terms of reference can be found at //councillors.liverpool.gov.uk/mgListCommittees.aspx?bcr=1 At present there are 6 Officers providing committee support whereas we are informed that this has been reduced from 24 Officers over time .

9.6. Some of the scrutiny work that we have seen is exemplary, such as, the Fractional Investment Scrutiny Panel Report[24]. However, this work was spearheaded by a longstanding Member of the Council and supported by the select committee Chair rather than from the Mayor or his Cabinet also the involvement of LCC Officers was limited . Overall from what the Inspection Team observed and heard a range of issues where identified, Members

[24] http://councillors.liverpool.gov.uk/documents/s245995/FISP%20Report%20Recommendations%20-%20FINAL%20240720.pdf

found it difficult to push back, substantial papers were circulated late allowing very little time for them to be considered – in one instance during the inspection a report of over 200 pages was circulated on the day of the meeting, scrutiny committee chairs have been prevented from accessing information they had requested, there were examples where ward councillors where not informed of decisions affecting their ward, there is limited planning/strategy of the scrutiny topics and work that the committees would undertake meaning topics for discussion were ad hoc. It is accepted that the officer resources for scrutiny activity are very limited; however, the fractional investment report showed that it is possible to undertake high quality work in LCC. Members need to be encouraged to do more planning of questioning and use of outside advice to achieve a better result.

9.7. LCC chooses to brigade the work of an Audit Committee with scrutiny responsibilities and creating a combined Audit and Governance Committee. This has a number of disbenefits. Firstly, an Audit Committee needs the right to report to full Council and to have its recommendations considered by Cabinet. Currently, although the Mayor is not listed as a Member of the Committee, it was practice that both the Mayor and Mayoral advisers attended all meetings and spoke on any item. In one instance reported to the Inspection Team, the Mayor challenged a significant audit report's finding and the process that led to its commissioning. It is worth noting the CIPFA Audit Committee 2018 guidance, which stipulates that:

> *"Inviting an executive member onto the committee should be avoided unless the committee has other compensating arrangements to ensure independence, for example, a majority of independent members or an independent chair. The executive member should not chair the committee. The leader of the cabinet, administration or the elected mayor should not be a member of the audit committee. However, the audit committee can invite members of the executive to attend to discuss issues within its remit and to brief the committee on the actions they are taking" ….*

It follows from this that once this task is complete the Cabinet Member should not take any further part in the proceedings.

9.8. It is the Inspection Team's view that the LCC practice is not appropriate and undermines the audit function. In addition, CIPFA urges authorities to ensure that Audit Committees are independent not only of the executive but also the scrutiny functions. This position is adopted in the statutory guidance which requires that authorities "ensure a clear division of responsibilities between the scrutiny function and the audit function". CIPFA also recommends inclusion of an independent member on the committee with appropriate skills and knowledge to properly contribute to the committee's role which is not the case in LCC. The blurred audit and financial scrutiny role leaves a material and concerning gap in LCC's governance framework.

9.9. The more fundamental issue that was observed was how scrutiny was treated by the leadership of the Regeneration Directorate. The Inspection Team observed examples of Officers that suggested taking decisions to Cabinet and asking for delegated authority was unnecessary red tape that slowed the process down. Officers within Regeneration also challenged what counted as a key decision and there was no culture of going back to Cabinet when a deal Cabinet had signed off was substantially changed even if the new deal went beyond the bounds of the original delegated authority. On a number of occasions Cabinet reports and DAR's were retrofitted at the end of the deal process – they were treated as a piece of paper that needed to be on a file. When DAR's were produced, they were done at speed based on verbal instructions, putting pressure on legal and finance teams to sign matters off without due consideration and diminishing their ability to be LCC's gate keepers. When legal and finance teams had the ability to challenge, they were often ignored by the Regeneration team and/or unsupported by senior officers when the issues they raised were challenged by the Mayor. There was evidence that lawyers often had to sense, and spell-check documents and Officers reminded that they would be published. Further, DARs often had little substance or justification for proposals put forward making it hard for Members to ask questions or challenge. Overall, it was not clear to the Inspection Team, that in all cases, DARs cleared by legal, and finance were the versions sent to the centre.

Training

9.10. Training for Members is essential to enable them to fulfil their various roles within the Authority properly and effectively. The precise training required by any individual Member will depend on whether they are or have an aspiration to be a Cabinet Member, the Chair of a Committee, or are a member of a regulatory committee or involved in scrutiny. All Members should have the opportunity to receive training on how to be an effective Ward Councillor, the perils and opportunities of social media and their obligations when handling confidential or sensitive information.

9.11. Also essential is training to enable Members to understand their obligations under the Code of Conduct for Members, expected behaviour including the registration of Interests and proper disclosure of gifts and hospitality. An understanding of the proper parameters of the role of a councillors in relation to the role of an elected mayor and the distinction between those and the role and responsibilities of officers is also essential. Member development programmes developed in other local authorities commonly encompass a wide range of such training for a local authority's Members.

9.12. Over the review period we found that LCC provided induction training for all new councillors on their election and asked Members to complete mandatory fraud training. When asked for evidence of any further training none was provided by the council. As noted earlier the ethics of some Members and their declarations of interests clearly showed that more work was required to ensure Members understood their obligations.

9.13. The Team also found in LCC that both Members and Officers failed to clearly understand their different roles. It was of note that the LGA Corporate Peer Challenge in 2018 recognised that the current Member-Officer Protocol which seeks to address and provide guidance on some of the key issues around these roles and responsibilities and working together effectively required urgent review and this was accepted by LCC.

The Remuneration Panel and Special Responsibility Allowances

9.14. LCC has adopted a Member Allowances Scheme in accordance with the Local Authorities (Members Allowances) (England) Regulations 2003. These allowances are considered by an independent remuneration panel and recommendations made to full Council generally on an annual basis which enables Full Council, following consideration of those recommendations, to set the allowances payable to Members for their work on the Council.

9.15. The Scheme provides for a Special Responsibility Allowance (SRA) to be paid to Members who are Mayoral Leads. The Inspection Team have been told that the appointment and designation of Mayoral Leads is at the discretion of the Mayor and that they are directly accountable to him. Their responsibilities are defined by the priorities identified to them by the Mayor. They may also attend Select Committees. It is of note that not all Mayoral Leads are elected Councillors, over the period of the review six non-elected Mayoral Leads have been appointed by the Mayor. They have been appointed to as leads for: City Wellbeing, Heritage and Design, Asylum and Rough Sleeping (3) Instead of being paid the agreed Mayoral Lead SRA most claim payment at a set daily rate. However, the employer of one Mayoral Lead has been reimbursed their salary, and the cost has been substantially i.e., five times, higher than the current annual SRA. It is of note that no formal, recognised processes for the appointment of such non-elected Mayoral Leads appear to have been undertaken. In this regard it would appear that LCC's HR service have failed to advise appropriately about the appointment of non-Member Mayoral Leads.

Elections

9.16. As noted in paragraph 3.7 above, LCC currently elects a Mayor for a 4-year term and in three of four years, elects a third of its Councillors. In addition, elections for the Mayor of the City Region Combined Authority means the whole city is in election mode every year.

9.17. The Local Government Boundary Commission for England (LGBCE) has recently commenced a review of LCC's electoral arrangements. This independent process sets the number of Councillors to be elected and their ward boundaries so as to broadly achieve electoral equality both now and in the future. At the start of the process LCBCE invites local authorities to consider their electoral cycle and to provide evidence on their preferred view of Council size. LCC approved their Council size submission in January 2021 which suggested no change to current arrangements. Their submission, which was well documented, did not appear to take particular account of the Combined City Region Authority, which would be expected to remove some Member level workload nor the move of work towards a Mayor, which is a characteristic of other Mayoral Authorities. A submission which better reflected this could be expected to produce a slightly smaller number than currently.

9.18. More importantly, LCC being in election mode every year provides less opportunity for scrutiny of a Mayor's actions as, whilst they would be bound by 'purdah rules' this need not slow down or pause the decisions they take. Councils in the recovery phase following an Inspection also need a long-term focus by the whole Council on getting things right, recognising that things may get worse before they get better. Embedding the cultural change needed to understand and comply with Nolan principles also needs a longer-term focus. It is the Inspection Team's considered opinion that this is best delivered by LCC moving to "all-out" elections and for the Council size to be reconsidered in the light of all these influences. Moving to an all-out system would also remove the presumption of a uniform pattern of 3 member wards. It would enable LCC to request a single member ward pattern with a consequent significant improvement in accountability of a Councillor to their electorate. There is much evidence to demonstrate that Councils in difficult circumstances need an electoral reset to ensure a changed approach. Specific examples would include LB Tower Hamlets, Anglesey, and Birmingham. It is, however, always difficult to give up what you know and move to a different system, even though post change reports indicate satisfaction.

9.19. The legislation[25] which enables these changes to take place requires consultation before moving to an all-out system and requires a full Council decision taken by a 2/3 majority. The way in which these types of issues have been handled by Members during the currency of this Inspection would not inspire confidence that a long-term view taken in the best interests of democratic leadership of the city would prevail. Nevertheless, the team consider that such a reset is a fundamental part of the changes necessary to secure best value and have framed a recommendation, which, if accepted would enable the Secretary of State to secure change.

9.20. It is understood that LGBCE have delayed their current timetable to provide for any consideration to take place and implementation of their final scheme would not be prejudiced.

[25] Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009

10. Conclusions

10.1. Undertaking this Inspection, at a time of COVID based restrictions and overlain by a major police investigation, to meet a timetable impacted by election purdah has been extremely challenging. The Inspection uncovered major gaps in what would be normal documentary evidence to support the decisions and actions of LCC at both Member and Officer level. In the functions subject to the Inspection, compliance with LCC's Standing Orders, regulations and the overriding legislation was clearly not part of the culture of the organisation and is only now being introduced as part of the actions by TR, although some elements are resisting this.

10.2. The failure to comply with the rules relating to Key Decisions, Scrutiny, Exempt reports and probity was evident but there appeared to be no action to address this until TR took up post. Processes exist to ensure these matters can be drawn out, even by writing to the external auditor, if it is too difficult to raise internally but there is no evidence this was done. It is clear from the evidence that some middle ranking officers could see what was happening and tried to draw attention to the risks and losses incurred by LCC. In some parts of LCC those concerns could not be seen in the round because of structures/resource limitations/reporting lines and in other parts, there was evidence that those Officers were not supported and exposed to aggressive challenge.

10.3. Yet it is possible to make changes and move towards good governance and action. TR took early steps to move functions around to improve control and compliance. This is starting to have an impact. The leadership that TR has provided is becoming evidenced in the most recent actions of LCC and it is clear many officers want to move on and do things properly. However, what TR is doing needs to be supported by wider group of senior officers. The top team are carrying a significant additional load due to the suspensions and arrests and unless additional capacity is found, it will take too long to make improvements happen organically. There is a perceived unwillingness form LCC to consider and act on the necessary reports or to allow interim support to be employed at the top of the organisation. This might be addressed following the completion of the disciplinary process relating to the Regeneration Director. Even so, it is clear that there is insufficient resource at the top and in the corporate centre of LCC to drive changes and embed them Council wide, given the recovery challenge.

10.4. LCC delivers some services through a range of LATCo' s. They were not a major focus of this Inspection and the team have only reviewed the two that were integral to the Inspection, LSSL and LFH. What became clear in this Inspection was that the failings reported in the recent non-statutory reviews of Nottingham City Council and London Borough of Croydon are reflected in what the team noted at LCC.

10.5. Had LFH continued in its current form, the accumulation of LCC funded debt based on highly marginal schemes, not forecast to come good for many years, would have presented major problems. Some of the propositions put forward to the LFH board included schemes that LCC had been involved in through the sale and development process and which would not recover their costs if disposed of on the open market.

10.6. LSSL is reported on in Section 5. This demonstrates that the principles of good company governance in a local authority context were not understood and best value clearly not delivered. In reality, LSSL looked more like an old-style Highways DLO than a company.

10.7. Some councils clearly do understand the purpose and rules for these structures but LATCo' s should not be used as a way of hiding a problem the council does not want to deal with in plain sight. This is an issue worthy of wider and further consideration.

10.8. The Inspection Team conclude, on the basis of the documentary and oral evidence considered, that LCC have failed to demonstrate compliance with the statutory requirements with respect to best value in the areas of the Inspection. The changes required need to be radical and delivered at pace so as to restore confidence in the integrity of LCC decision taking and implementation.

11. Recommendations

The Secretary of State for Housing, Communities and Local Government is recommended to:

1. Appoint Commissioners to oversee and approve or otherwise, the Council and its officers in preparing and delivering the Improvement journey of LCC, for an initial period of 3 years. This only to be extended if LCC fails to make satisfactory progress in implementing and embedding the changes necessary to deliver best value in its governance and operations.

2. Remove the power of LCC to seek to change its electoral arrangements under the Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009 and, instead, delegate these powers to the Commissioners to consider and consult upon a proposal to change the LCC electoral cycle to an all-out elections once every 4 years, with a reduced number of Councillors elected on a single member ward basis to be implemented as part of the current boundary review being undertaken by the Local Government Boundary Commission for England.

3. Direct LCC to prepare and implement an Improvement Plan, to the satisfaction of the Commissioners with, as a minimum, the following components:
    a. In the first 12 months review and implement changes to the Council's constitution which will
        i. Improve the ethical governance framework to best practice incorporating the LGA model code and a fully functioning Standards Committee.
        ii. Constitute the Audit Committee as a stand-alone committee with a direct reporting line to Council and a right to have its recommendations considered by the Executive Mayor and Cabinet, with either an independent Chair or an Independent Technical Advisor.
        iii. To re-establish Scrutiny activity in line with Statutory Guidance ensuring that Councillor leadership of the activity is on a cross party basis and with appropriate officer support.
        iv. Introduce best practice Standing Orders and Regulations for contracts and property disposals.
        v. Review the scope, content and reporting of all delegated powers.
        vi. Establish a specific code of conduct for all Members in connection with dealing with Planning and Licencing matters.
        vii. Require mandatory training of members in key activities, including behaviours, before participation in Council activities other than full Council.

viii. Improve the content and updating of declarations of interests and gifts and hospitality, for both Members and Officers.

b. Require the consent of Commissioners before LCC at either Member or Officer level agree Heads of Terms for any property transaction and subsequent consent before any legally binding commitment is entered into.
c. In the first 24 months, review the roles and case for continuing with each subsidiary company of LCC. For those companies that it is agreed to continue, ensuring that the Directors appointed by LCC are appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate.
d. To consider and approve a suitable officer structure for LCC which provides sufficient resources to deliver LCC functions in an effective way, including the Improvement Plan and its monitoring and reporting within 6 months.
e. To oversee a detailed structure and strategy for the Highways function in short and medium term as set out in the Highways section of this report
f. Establish a plan to deliver an effective file management system so that LCC can more easily comply with its statutory and managerial responsibilities.
g. Devise and implement a programme of cultural change which ensure both Members and Officers understand their respective roles and the way in which the Council and its activities are regulated and governed and the way in which this is monitored, and breaches rectified.

4. For the direction period, to
   a. Obtain prior agreement of commissioners to any dismissal or suspension of a person who has been designated a Statutory Officer or the Assistant Director Governance, Audit and Assurance or equivalent.
   b. Ensure any appointments of a person to a position the holder of which is to be designated as a statutory officer or the head of internal audit are conducted under the direction of and to the satisfaction of any commissioners.

Max Caller CBE
Lead Inspector

Viv Geary
Assistant Inspector

Mervyn Greer
Assistant Inspector

12. Case Studies

A : Former Toxteth Community College – 68 Falkner Street L8, Blackburne House

The above property, having been surplus to requirements, was initially marketed in 2012. It had been agreed this would be leased to Blackburne House on a 10 year fully repairing and insuring lease basis. There is a valuation on file, ascribing a capital value and a consequent ground rent to support this proposition.

Blackburne House (BH) is a well-respected registered charity in Liverpool offering a range of services, primarily to women in the education and training fields. It was established in 1983 and has a significant track record.

For whatever reason, the deal noted above seemed to have stalled.

In 2014 an unsolicited offer was received from the Elliot Group (ELG) to construct a multistorey mixed use scheme block providing around 8000sqft of space on the ground floor to provide for BH interest together with 132 apartments. The file notes that as ELG did not express an interest at the time of the 2012 marketing competition would be required to demonstrate best value compliance.

A brief option appraisal was carried out and, although the valuation on the file is prepared on a basis which overestimates the costs and does not reflect the options actually considered , it suggested that there were 3 main options: remarket; accept the ELG offer which would involve a sale of the freehold for £425,000 and the provision of a ground floor space to be leased back to LCC for a term of 999 years at a peppercorn, which would be let on to BH under a 125 year internal repairing and insuring lease; or straight sale producing a receipt of £525,000. An alternative basis for valuation which actually reflects these options could have produced values of some £0.5m more.

The option providing for BH was endorsed at officer level.

A scheme was worked up on this basis, providing for a shell construction of 8052 sq.ft. on the ground floor and some 109 apartments. From correspondence on the file, it is clear that BH believed that they had a side agreement with ELG that in exchange for supporting the scheme and helping with consultation they would get a fitted-out unit in which to carry out their work. They clearly thought that ELG would instruct their professional team to produce a design and deliver the works as part of the main construction. This would have been reinforced by a consultation leaflet produced by the Developer in December 2016 stating that BH were to occupy the GF.

This was not the basis of LCC's proposed deal with ELG. It was a straightforward sale of freehold with a leaseback of ground floor space that could be passed on.

One could criticise BH for being naïve, and not getting, at least, an exchange of letters to confirm their understanding but it is also true that nothing was done to disabuse them of that understanding.

At this stage there did not appear to be any specific Member authority to cover the officer actions. Negotiations were commenced on a proposed lease back arrangement, which from the correspondence were extremely difficult and fractious. Eventually, in March 2016, a Delegated Action Report (DAR) was signed to provide the first authority for the action taken. This provided for the consideration of £425,000 for the freehold sale plus fees, a 125-year leaseback of the ground floor at a peppercorn and BH to be responsible for their own fitout works. This DAR was not submitted to Select Committee as required by Standing Orders so it could not have been scrutinised.

At the same time as this was signed it was clear that in an undocumented negotiation between the Director and ELG the consideration was now £325,000, because ‘it was the only way to offset the S106 costs’ estimated at around £300,000. So, the DAR was not correct and the officer authorising this must have known this.

Planning consent was granted although subject to a S106 agreement which was not actually completed and signed off until practical completion some two years later. The driver for this completion was in fact due to the Special Purpose Vehicle set up by ELG to deliver this development wanted to sell the completed development to a Jersey based ground rent investment company. This deal was in fact, completed in July 2018 for £1.496m as the S106 was paid up and completed on 29th June 2018.

At this point, BH realised that ELG were not going to keep what BH thought they had been promised. No design had been progressed so the shell construction was to the minimum standards that could be delivered.

BH then sought LCC’s help to get a design and works completed to the empty shell that has now been constructed. Officers issue what they call ‘a letter of comfort’ authorising BH to commit to design expenditure which it is said will be recovered from the developer. This is not in accordance with the property deal entered into by LCC. On the basis of that letter BH run a process that appoints a design and build contractor to fit out their space. LCC make it clear that, whilst they will fund the works up front, they will recover these costs via the ground rent for the underlease they will offer BH.

A second DAR in June 2018 is authorised changing the basis of the lease back from 125 years to 999 years, but the consideration is not corrected to the £325k negotiated between the Director and ELG.

During 2018 it becomes clear that the as built does not match the design brief for the shell and no real assessment had been done of demand on services. There are issues over water supply, drainage, and power. As the costs of the fit out become clear, LCC/BH realise they are unaffordable for BH alone. This results in BH agreeing to take half the space originally on offer and the remainder being converted into 6 dwellings which would then be passed on to LFH to manage on a market rent basis. None of this appears to be authorised by Members. Various drafts of Cabinet reports circulate during the first quarter of 2019 before being pulled from the agenda due to Purdah!

Eventually Cabinet gets a report which sets some of this out in June 2019 and identifies a capital demand of around £1.1m to pay for both housing and BH works. This is the point that LCC finds out that the freeholder is New Emerald Ground Rent Trustees registered in Jersey and that their consent is required for the works to proceed. By November 2019 it was clear that the costs cannot be contained and Cabinet authority for spend will be exceeded. A significant part of the additional costs arises from the under provision of water supply which could have been anticipated at original lease drafting. A further series of drafts of Cabinet reports appear which provide a range of cost estimates to complete the work, identifying errors in the original report calculations. There are also concerns that at this level of costs it will be a very marginal scheme for LFH to take on as the market rent will not be high enough to guarantee the necessary margin.

Pending consideration by Cabinet of additional funding to complete the build, a further DAR is signed by the Director to enable an interim payment to the builders working on site but, as a result, apparently exceeding the budget previously authorised by Cabinet at this point.

Eventually, in January 2020 a Cabinet report is signed off and the budget is increased to provide authority to spend just under £1.6m to finalise the construction.

B: Tarmacademy

This Case Study concerns the acquisition of 4 areas of industrial land of approximately 2.84ha in total in the Derby Road area of north of Liverpool for over £4m.

In 2015 proposals came forward from Knowsley Construction Ltd trading as King Construction[26] (Kings) to develop a training and apprenticeship facility (with classroom, IT suites, changing areas and office space) together with an asphalt plant to be operated by Cemex, in the Derby Road area of North Liverpool. This was known as Tarmacademy. The facility was to provide 45 new jobs for local people and support 1000 trainees from unemployment into jobs and apprenticeships over a five-year period.

In December 2015 Regeneration submitted a report to Cabinet signed off by Legal and Finance about the Tarmacademy proposals noting that a new company had been set up by Kings to deliver and run the training facility (Tarmacademy (Liverpool) Ltd (TLL)). The report states that the initial investment by TLL and Cemex is £2.32m, however, it later transpires that this investment is by Cemex alone). Although Cabinet agrees to assist Kings (and so TLL and Cemex) to acquire sites in the north Docks area of Liverpool and authorises Officers to acquire suitable sites and negotiate suitable leases with Kings (and thereby TLL and Cemex) to deliver the project no clear business case or clear reasoning why the Council should assist Kings (or TLL or Cemex) by purchasing the land or any assessment of risk of providing such support is provided. A budget limited to £3.5 m (funded from borrowing) for the land acquisition is also agreed. Again, no reasoning is provided for the budget proposed and agreed. There is no explanation why Kings or Cemex or the new company, TLL, should receive such preferential treatment and support from the Council and why, if the Council considered the proposal to have merit, it did not consider alternative ways of delivering the training facility or encouraging Cemex to open a new facility in the north Liverpool area.

The £3.5m budget was provided subject to financial, legal and property due diligence, and the submission of robust and sustainable business cases which confirm best consideration for the land and revenue returns which more than mitigate the costs of borrowing within 3 years. When the report is submitted to Cabinet it is asserted that the decision is urgent and so it is not subject to call-in and scrutiny and so no further consideration of the merits of the proposed training facility, desirability of a new asphalt plant or the process for delivery takes place.

What happens next involves the completion of a series of Delegated Action Reports (DARs) ostensibly sanctioning the purchase and disposal of land but which fundamentally fail to comply with the authority delegated by Cabinet, and reveal

[26] Kings Construction is now under new ownership and the current owners have no connections with the principals involved at the time.

(inter alia) a complete failure by the Council to show that the best value duty has been complied with.

At the time of the Cabinet meeting, although this is not made clear in the report, four parcels of land had already been identified for purchase. The then owner, C&PS Ltd (CPS) seeks £4m for their interest in the sites. The internal valuation for the sites carried out in December 2014 was between £2.38 and £3.075m. It was noted at that time that one site had previously been marketed at offers in excess of £2m but that this was considered by the valuer to be well in excess of the market value and this is confirmed in a further, external, valuation received in January 2016. The external valuer provided three different valuations based on specific assumptions, therefore if any of those assumptions were incorrect or became unachievable the valuations would inevitably change and whether the Council was achieving best consideration would be adversely affected. The lowest external valuation assumes that three of the sites are cleared of old industrial buildings and values the land at £1.22m. If two of the sites are leased by the Council to Kings and Cemex as planned for £50k per year for each site, with no rent-free periods or break clauses, and 18 wind turbines are installed across the sites an annual income would be generated of £205k and the capital land value rises to nearly £2.3m. However, if initial discussions for a digital advertising display on one of the sites is successful and a lease entered into, the additional income generated of £150k per year increases the value of the four sites to £4.05m.

Ostensibly on the basis of the authority provided by Cabinet, on 22 January 2016, the Regeneration and Finance authorised a DAR which sets out the initial Heads of Terms for the Tarmacademy proposal. The DAR agrees payment for the sites of £3.728m including stamp duty together with the grant of 20-year leases for £50k per year to both Kings and Cemex with initial 6 month rent free periods to be completed back-to-back with the land purchases. On these terms the rent-free period adversely impacts on the valuation of the land, but more specifically the price exceeds the available budget agreed by Cabinet in December. In addition, the report does not provide any evidence of due diligence or the required robust and sustainable business cases to support the best consideration for the land and the income does not mitigate the borrowing costs expected within the requisite 3 years. So, the terms proposed in the DAR exceed the authority agreed by Cabinet the previous month. In addition, although the proposal is to expend over £3.7m this decision was classified as exempt from publication due to commercial sensitivity and was not subject to additional scrutiny through the usual safeguards of the call-in processes.

Despite the terms set out in the DAR, the purchase price of the land continues to be subject to negotiation with CPS. Meanwhile, by March 2016 Cemex has separately negotiated with the Council a longer 12 month rent free period on their proposed lease on one of the sites and the underwriting of their costs of land preparation on the site in the event that they did not finally enter into a lease; the “target date” for the lease referred to in the report was 31 March 2016 (although it actually eventually completes in May 2017). A further DAR agrees to these changes. However, this further DAR in presenting the financial evaluation of the impact of extra rent-free period misrepresents the basis of the highest external valuation received by failing to correctly state that this was based not only on the absence rent-free periods but also on the generation of £355k per year income through the leases for the land, advertising hoardings and wind turbines referred to above, none of which had been or were close to being successfully achieved. The introduction of the 12-month rent free period fundamentally undermined the borrowing cost recovery within 3 years required by Cabinet. The DAR was expressed as amending the DAR agreed in January but neither DAR complied with Cabinet's explicit preconditions and so did not provide authority for Officers' decisions or actions. Again, the report was expressed to be Exempt and was not subject to Member scrutiny processes.

In the meantime, negotiations for the purchase of the four sites continued and to complete the land transactions the parcels were split into two tranches. On 8 July 2016 a further DAR was authorised by Regeneration and Finance agreeing to the purchase of the largest parcel of land on Brunswick Place for £2m. The DAR again refers to a lease to Kings at £50k per year to mitigate some of the costs and also states that "a further £50,000 per annum will be received from advertising hoarding revenue" even though no agreement with any advertising company had been reached even in principle, and no commercial agreement for the erection of advertising hoarding is ever entered into. The report provides no detail on how the valuation was reached save for reference to a "CBRE Valuation Report- July 2016" which was not attached, cannot be found and CBRE denies was ever made. Again, there is no robust business case or evidence of financial or legal due diligence to support the decision although the report states that consultation has taken place with the City Solicitor, the Director of Finance and Resources, the Mayor and the Cabinet Member for Regeneration. Again, the decision was not subject to any scrutiny by Members, it was declared to be commercially sensitive and so not publicised; further, on this occasion it was stated not to be a Key Decision, not subject to scrutiny call-in and could be implemented immediately. The DAR does not provide any proper authority to purchase the land.

Nonetheless, the land was purchased from CPS the following month, in August 2016, but no back-to-back leases were entered into to secure offsetting income at that point as envisaged by the flawed original DAR, only a license (at no cost) is granted to Cemex in November 2016 to carry out remedial works. Payment was also made of an additional £87.5k for (unverified) bridge repairs undertaken by CPS and mineral rights.

In October 2016 a further DAR is signed by an Assistant Director (apparently in consultation with the Director of Finance and Resources, the City Solicitor and the Mayor) purporting to increase the budget set by Cabinet in December 2015 by £450k plus an amount for stamp duty, to enable delivery of the Tarmacademy. This purports to enable the purchase of the remaining 3 sites for £1.95m. However, it is not possible for an officer to extend the authority provided by Cabinet. Again, the report is not subject to Member scrutiny. Despite the absence of proper authority, the purchase is completed later that month.

On inspection the report is flawed in so many ways it refers to proposed income from Tarmacademy of £50k from these sites but that is wrong, the Tarmacademy base was to be on the first tranche purchased adjacent to Cemex. Not that TLL ever took the lease so none of Tranche 2 land was required to enable delivery of Tarmacademy which raises the question, why buy it?: the report claims advertising income of £50k which does not exist: the Decision says Cabinet agreed a price (£3.5m) but that was a budget there are no robust business cases or due diligence or back to back leases planned to be entered into as referred to the sites aren't cleared thus affecting value the phantom CBRE valuation is relied on again

On 23 January 2017 a DAR is finally agreed for a 20-year lease to Cemex at £50k per annum for part of the first tranche of land purchased for £2m, land which Cemex has already occupied rent free for several months. However, completion of the lease is to be further delayed until May 2017 thereby providing Cemex with occupation for four more rent free months. The DAR states that rent will become payable on the lease from 1 June 2018 onwards and part of the reasoning is that Cemex has worked on the land at risk. This is not correct as the Council has previously agreed to underwrite Cemex's remediation costs. Cemex has now opened an asphalt plant on the site.

In the five years since the original Cabinet decision to assist Kings to acquire sites to create the Tarmacademy training facility, the Council has itself purchased land for in excess of £4m without evidencing a valuation to support such payments and has incurred ongoing annual borrowing cost, of c£350k with a considerable shortfall in annual income to offset that cost and no lease has been entered into with Kings, TLL or any other body for the training facility. The debt incurred and transactions entered into have not been authorised by Cabinet. Despite the fundamental changes from the position agreed in 2015 there has been no further reference to Cabinet to consider the matter and to determine next steps. Despite the Council's investment no training facility has been set up; the SPV created to support the original proposals never operated and was dissolved in 2016.

All the land transactions linked to this project were outsourced and so the transaction documentation was not held within the Council's Legal Services until the omission was discovered in May 2017 and obtained from the external lawyers.

The Council's Internal Audit team reviewed the transactions referred to above and interviewed the Director of Regeneration in August 2017. Despite the report to Cabinet in December 2015 being submitted in his name and his signing of most of the DARs, the Director stated that specific officers from within Regeneration and Finance had written the reports, that the information in the Cabinet report was incorrect and also that it was always intended that the occupation of the land was to be rent free. He also stated that he was not aware of an income target for the land.

C: Small Sites Disposal Package 2014

Although this case study starts earlier than the Review Period, it is included because it illustrates the way in which disposal terms were manipulated through the Review Period and the lack of effective oversight by Councillors or compliance with Delegated Powers and Standing Orders.

As part of LCC's approved Housing Strategy 2013-2016, LCC sought submissions from both individuals and organisations to look at acquiring either 1 or 2 small sites or for organisations who wanted a larger portfolio of sites. LCC identified 16 small sites and these were marketed via an advertorial in the Liverpool Echo in early 2014. It was also placed on the Council website and attracted a fair measure of interest. Closing dates for tenders was set in early May 2014 and the offers were opened in accordance with Standing Orders. Despite LCC stating that they were interested in innovative approaches not previously explored, evaluation was quite traditional. Not all sites received a bid and some sites, more than one bid. If the highest offer in each case for the 8 sites that did receive a bid had been accepted a capital receipt of £1,010,000 might have been realised.

One bidder (FG) offered a package for all sites being transferred for £1 for each site with a deal to be negotiated on overage. They did not appear to achieve the highest score on evaluation. Another bidder, employing a local Councillor as a consultant, offered to deliver housing on 4 sites on a profit share basis with a sample calculation to illustrate the potential return.

In September 2014, a DAR was prepared. The DAR relies on the general delegation to the Director of Regeneration to dispose of land and property but use of this delegation is subject to consultation with the Mayor and Cabinet Members, notification of Ward Members and the reporting of the decision (i.e. the DAR) to the next Select Committee and publication in the Members' bulletin.

The DAR reported the LCC valuation as £441,810 and decided to transfer the entire package of 16 sites to FG for a total payment of £552,063 subject to site investigations. The source of this figure is unclear, but no reference is made in the DAR to the nominal payment plus overage in accordance with FG's bid. It recorded that payment would be made on site transfer (i.e., on completion of the sale of the sites) and that transferring the land would save some £16,000 pa on maintenance costs. There is no calculation which seeks to justify why this is best value. However, the analysis in the report does turn the original proposition of seeking new and innovative approaches to housing delivery on its head and rules out everybody else that makes a bid whether conservative or innovative.

There is no reference in the DAR to any consultation or notification of Members as required when using this delegated power and no indication that this was ever undertaken. Nor is there any indication that use of the DAR was submitted to a Select Committee in the required timeframe.

In the first half of 2015, negotiations were in train to ensure these Heads of Terms were embodied in a contract. It becomes clear at this point that the FG has not offered £552,063 (and in the event no such sum is ever paid). FG is still proceeding on the £1 plus overage basis. As LCC lawyers make clear, this is not really a sale at all but more like an open-ended call option and it is suggested that the whole basis of the DAR is wrong. This provokes the Assistant Director to propose that FB will accept the original DAR proposal but that no payment will be received until the last unit on the last site is sold!

At the same time, two sites were removed from the package as one had already been sold by LCC and the other had title issues which could not be readily resolved. Two different sites were substituted in due course. The changing of sites in the deal becomes a feature.

There is clear legal advice not to do this deal on the basis now proposed. Finance also makes it clear that this will raise issues of State Aid and is not in line with Standing Orders, presumably not being the highest bid received. Further internal consideration ensues and in due course negotiations with the buyer results in a further DAR in August 2015, a year after the original DAR, substantially revising the original terms for disposal and providing for site changes. It provides for the payment of a 5% deposit of the £552,063 “purchase price” on exchange of contracts, payment of a development profit share calculated and paid on the practical completion of the last unit built on each site not on the completion of the sale, and LCC is to be protected by a restriction against disposal by FB registered on each site. The purchase price is also “subject to planning”. There is no provision for the return of the sites following transfer if a development does not proceed.

Eventually contracts are exchanged in August 2015 but for only 14 of the sites and the terms have evolved further during the contract negotiation process. Completion of the sale is agreed to take place when planning permissions are granted; development of housing has to be progressed in a timely way, although there was no absolute obligation to complete the development and so no certainty that the profit share would be payable; the Council receives a 25% profit share but only payable on completion of the sale of the last plot on each site and no certainty that all plots would be sold; and any losses on one site are netted off against profit on another more successful site. Some protection for the Council was expected to be provided by a prohibition on disposal, mortgaging, or charge of the site without the Council’s consent, but in the event, it failed to be registered by the Land Registry and was not pursued.

Later in 2015, it was agreed that the sale could proceed without planning permission for all sites in place and completion on 12 sites took place in January 2016, the 2 outstanding sites completed later. In April 2016 FG wished to sell one of the sites for development by another party and it was agreed that they would not be bound by the profit share arrangements and the obligations would remain with FG. Disposal of sites by FG has continued to be a feature.

At this point, albeit with some changes of sites prior to completion of the disposal, the land transactions derived from the original Small Sites tender process was concluded. However, over a year later, in May 2017 ostensibly under the "Small Sites Build Programme", a further DAR is signed to dispose of a selection of additional sites to FG in the Lancaster Street/Sterling Way area apparently capable of providing a total of 123 housing units. There is no clear linkage with the original Small Sites disposals although it is asserted that there is and it is apparent that the scale of the potential development on these sites and continued failure to fulfil the original policy aspiration of a new and innovative approach to housing delivery is not consistent with the proposed disposal but there is no further analysis or consideration evident to support this disposal.

The basis of the disposal is the profit share arrangement previously agreed with FG for the earlier sites and this is certified as the best price reasonably obtainable even though no further tender exercise has been carried out to test this premise. As a result, the DAR relies on the General Delegation to the Director of Regeneration to dispose of land and property as referred to above and which is subject to consultation with the Mayor and Cabinet Members, notification of Ward Members, reporting to the next Select Committee and publication in the Members' bulletin.

The process of disposal by private treaty and not by tender is stated to be authorised by the Property Standing Order (PSO) enabling disposal to a developer proposing a scheme with a regenerating effect and which could be prejudiced by seeking tenders. However, in this instance there is no apparent formal analysis why this approach is appropriate and will achieve the best price, or evidence that the proposed disposal approach was presented to the Mayor and relevant Cabinet Members as required or that the DAR was presented to the Select Committee the relevant timeframe.

This DAR is indicative of a failure to effectively test other options for disposal and redevelopment of these more modest areas of land and continues the disposal of sites to a particular builder (FG) without sound and evidenced reasoning to support the use of private treaty. All this is undertaken without any apparent oversight or challenge through proper scrutiny processes by Members; no opportunity is taken to properly reflect on the appropriateness of the overall model adopted, including the robustness of the profit share structure. Despite this, a short time later, a further disposal takes place with the prospect of 14 houses being built on another modest area of land at Park Street and is authorised by a further DAR purporting to rely on the PSO to sell by private treaty to FB.

Suffice to say, apart from the initial 5% “deposit” paid in respect of the first tranche of sites disposed of, no income has ever been received by LCC from these disposals and at the date of this report 7 sites remain undeveloped or only partially developed. Several sites have in fact been transferred on and either remain vacant or have been developed by others, and an outstanding reconciliation of any potential profit share with FB remains to be undertaken, however the enforceability of the agreed terms for the profit share from FB is untested.

It is notable that to enable housing development on some of the disposed sites LCC has had to make further financial commitments particularly where the properties built or planned to be built could not be sold on the open market as viability reports were produced to show that compliance with normal planning requirements were unaffordable.

Financial support for four of the sites which in the event had been sold on other developers cost LCC a total of £175k in subsidy to aid development because of “significant site abnormal costs.”

LCC’s housing company, LFH was supported with £1.7m funding to acquire the 14 houses built on the Park Street site, one of the last Small Sites disposed of to FG and homes built on Birchfield Street (which had been sold on by FB) were also purchased by LFH supported by funding from the Authority.

In conclusion, despite the positive policy objectives seeking new and innovative approaches to housing delivery expressed when the Small Sites scheme emerged in 2014 this has not been achieved. What is clear is that this extended project has achieved no capital receipt for LCC yet has resulted in material sums being outlaid by the Authority to deliver housing on some challenging sites. In particular, the scheme has enabled a local contractor to construct housing (but only where it chose to) at no risk to itself or its profit margins. This has left numerous sites undeveloped, but now LCC no longer owns or directly controls them.

13. Appendices

Appendix 1: Appointment letter

Ministry of Housing, Communities & Local Government

Catherine Frances
Director General, Local Government, Strategy & Analysis
Ministry of Housing, Communities & Local Government
2 Marsham Street
London SW1P 4DF

Max Caller CBE
By email

17 December 2020

Dear Mr Caller

Appointment under section 10 of the Local Government Act 1999

For some time there have been concerns about planning, highways, regeneration and property management at Liverpool City Council. The current police investigation into these matters has a significant connection to the City Council.

Having had regard to the information below, the Secretary of State has decided to proceed with a best value inspection to provide direct, independent assurance that the council is complying with its Best Value Duty:

a) The Merseyside Police investigation into fraud, bribery, corruption and misconduct in public office, which involves a significant connection to Liverpool City Council.
b) The response Liverpool City Council submitted to the department on Friday 11 December 2020 in respect of governance arrangements, oversight and control measures within the Council including details of the measures and controls implemented during the course of the last eighteen months.

It should be noted that having reviewed the information provided by Liverpool City Council, the Secretary of State recognises the steps the council has taken to improve governance and assurance processes, particularly with respect to the authority's planning, highways, regeneration and property management functions, as well as broader measures intended to prevent fraud and corruption. However, the Secretary of State has concluded that, given the seriousness of the issues identified through the police investigation, and to support the council to continue to strengthen its governance, and deliver services for the people of the city, he would like direct, independent assurance that the council is compliant with its Best Value Duty.

I am therefore writing to inform you that the Secretary of State, in exercise of his powers under section 10 of the Local Government Act 1999, as amended by the Local Audit and Accountability Act 2014 (the 1999 Act), hereby appoints you as the person to carry out an inspection of the compliance of Liverpool City Council with the requirements of Part 1 of the 1999 Act in relation to the authority's planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.

The Secretary of State also, in exercise of his powers under section 10(4)(b) of the 1999 Act, gives you the following directions in relation to your undertaking the inspection.

First, in undertaking the inspection in relation to the authority's functions specified above, and without prejudice to the scope of this inspection, you are directed to consider, in the exercise of those specified functions, whether the authority has effective arrangements in place for securing best value in its planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.

Second, you are directed to report the findings of the inspection to the Secretary of State by 31 March 2021, or such later date as you may agree with the Secretary of State. The Secretary of State may, following receipt of your report or otherwise, issue further directions to you.

Section 12 of the Local Government Act 1999 provides that the authority to be inspected must pay the Inspector's reasonable fees for carrying out the inspection. As to practicalities of your appointment as inspector, we will provide you with an appropriate administrative team to support you in your role as inspector, and any assistant inspectors whom the Secretary of State may appoint at your request.

Finally, a memorandum of understanding will be developed between Merseyside Police and the Inspector to ensure that:

a) The inspection is carried out in a way that does not prejudice the ongoing criminal investigation; and
b) The Inspector(s) share any information that may be relevant to the criminal investigation with the police.

Yours Sincerely

CATHERINE FRANCES

2. Police MOU as released following FOI request.

Protocol of investigative working between

Merseyside Police

and

Max Caller

regarding

Merseyside Police Operation Aloft & The Investigation of Liverpool City Council led by Max Caller on behalf of HM Government

This protocol document recognised that there is not a joint investigation between Merseyside Police and Max Caller and team, but in fact two separate investigations. An information sharing protocol is required so as the investigation led by Max Caller does not prejudice the police investigation.

The operational investigation of the subjects of Operation Aloft is for Merseyside Police to manage. Max Caller has been appointed by the Secretary of State for the Ministry of Housing, Communities & Local Government under the provisions of section 10 of the Local Government Act 1999, as amended by the Local Audit and Accountability Act 2014 (the 1999 Act),as an Inspector to provide independent assurance that the council is complying with its Best Value Duty' or otherwise.

Max Caller and team will treat the sharing of information as an intelligence development process only at this stage.

[redacted].

Statement of Intent regarding the investigation

This document records a shared protocol of working between Merseyside Police and Max Caller and team. It relates to the prevention, detection and investigation of offences in relation to fraud, bribery and other serious crimes for Merseyside Police and investigating due process and 'best value' within Liverpool City Council for Max Caller and team

Each organisation will direct the use of its own operational resource by arrangement between the local managers who will ensure the respective skills and resources of each organisation are utilised to best and most efficient effect.

Background

Following [redacted] reports produced by Internal Audit, on 16 August 2019 [redacted] the assessment of this report, the Fraud Investigation Unit within Merseyside Police's Economic Crime Team commenced investigating allegations of fraud and misconduct in a public office. This formed the basis of the now titled Operation Aloft.

Basis for Disclosure

The fundamental basis for disclosure and data sharing between the Max Caller and Team and Merseyside Police and/or relevant external enforcement agencies relates to issues and procedural irregularities identified as a result of Audit Investigations. In this instance, the relevant legislative provisions are those of GDPR Article 6.1(e) (public task), Article 9.2(g) (substantial public interest) and Data Protection Act 2018 S15 (1)&(2)(a)&(b) and schedule 2, part 1, 2(1)(a) & (b); specifically, the prevention and detection of crime.

It is noted that such a request places no compulsion on Max Caller and Team to disclose information, but should they consider it legitimate and proportionate to provide any requested data, then this should tend to provide necessary reassurance that a disclosure for these purposes is appropriate and in compliance with the Data Protection Act 2018 and UK GDPR.

Operational Objectives

The aim of the Merseyside Police investigation is to:

- Establish the full extent of the suspected criminality;

[redacted]

[redacted]

[redacted].

The aim of the Inspection is to:

- Proceed with a best value inspection to provide direct, independent assurance that the council is complying with its Best Value Duty.
- Find out whether the authority has effective arrangements in place for securing best value in its planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements.
- Report the findings of the inspection to the Secretary of State by 31 March 2021, or such later date as they may agree with the Secretary of State.

Information Exchanges

The exchange of information between Merseyside Police and Max Caller and team in respect of the criminal investigation and the statutory inspection shall:

- Be in accordance with the Law and the guidelines issued by Merseyside Police and Max Caller and team.
- Be relevant only to the investigation and aims of the operation to which this protocol applies.

- Merseyside Police and Max Caller and team undertake to store securely all information received under this protocol and only those who have a genuine business need to see the information will have access to it: and

- The information will not be disclosed to any third party unless the owning organisation has been consulted and their authority given in writing.

Disclosure Process

Requests will –

- Be submitted in writing at all times using the DP1 pro-forma using designated and recognised secure email systems.
- State the basis of the request and clearly identify the information required.
- Be lawful and proportionate.
- Be related to the investigation as specified within this protocol.

In response to such a request, Max Caller and team will –

- Consider the request as appropriate in line with its own interpretation of the Data Protection Act 2018 and the UK GDPR.
- Carry out all reasonable endeavours to locate and source requested information.
- Provide a written response to Merseyside Police using designated and recognised secure email systems.
- Maintain appropriate records of the provision, or the decision not to provide, requested information.

In addition –

- Both Merseyside Police and Max Caller and Team will ensure regular meetings take place as agreed by both teams [redacted]
- [redacted].
- Discussions in relation to the sharing and publication of the final report will be subject to separate discussions.

Data Protection Act 2018 (UK GDPR)

Both Merseyside Police and Max Caller and team shall at all times ensure that they comply with the requirements of the UK GDPR.

Human Rights Compliance

Both Merseyside Police and Max Caller and Team shall consider the implications of the Human Rights Act 1998 where appropriate and shall adhere to its principles of legality, necessity, relevance and proportionality.

Timing

The provisions of this protocol shall commence at the date of signature by both parties and cease upon the conclusion of the case; unless the parties agree otherwise in writing.

Status

This Memorandum of Understanding (MoU) is not intended to be legally binding, and no legal obligations or legal rights will arise between the parties from this MoU. The parties enter the MoU intending to honour all their obligations under the law. This MOU is agreed during a period of post transition of the UK leaving its' membership of the EU. During the lifetime of this agreement the law change from the GDPR (EU 2016/679) to the UK GDPR whereby some aspects of the legislation may change. The parties agree to abide by any new legislation introduced during its use.

Signed on behalf of Merseyside Police by:-

Date:

Signed on behalf of the Max Caller and Team by:-

Date:

Terms of Reference V2.0 (Amended Sept 2018)

Board of Directors

Director (Chair) - Cllr Wendy Simon (Deputy Mayor)

Director - Cllr James Noakes (Cabinet Member for Neighbourhoods & Waste)
Director - Ron Odunaiya (Director of Community Services)

Advisory Officers -

Mike Brown – Chief Operating Officer Louise Rice (Human Resources)
Paul Murphy (LSSL Accountant)
Peter Casterton (Divisional Manager, LCC (Deputy S151 Officer) Richard Hopkins, LCC (HR)
Gary Wormald, LCC (Legal)

Purpose:

The purpose of the Board of Directors and Chief Operating Officer is to:

1. Develop and maintain the Company Vision and Five Year Business Plan.

2. Provide strategic direction and leadership to the Company in line with the objectives and agreed principles of operation and the approved business plans and budgets.

3. Oversee the running of the Company and be accountable for its success.

4. Be responsible for the Workforce Safety; Health and Environment, including Union and workforce relations. To oversee the activities of the Advisory Officers in respect of managing and addressing Union and workforce related issues.

5. Provide advice, oversight and challenge with regard to the services' performance against the approved business plans and budgets.

6. Hold the officers of the Company (and Advisory Officers) to account for the delivery of the services' business plans, within the approved annual budget and the realisation of the benefits identified.

7. Provide direction in relation to the management of risks and issues that have been escalated by the Advisory Officers, ensuring that effective, mitigating actions are able to be put in place.

8. Request detailed updates as needed from the Advisory Officers or Company Management, particularly where there are concerns about performance.

9. Review and challenge performance and financial monitoring reports quarterly.

10. Resolve operational conflict and remove blockages that have been escalated by the Advisory Officers.

The Role of the Advisory Officer(s)

The advisory officer shall be to:

1. Ensure the effective operation of the Company on a day to day basis.

2. Report to the Board of Directors on all operational issues and matters that may/will impact upon the performance of the Company.

3. Provide technical and specialist advice to the Board so that it can make informed business decisions.

4. Provide annual business plans and report progress against the plans.

5. Manage day to day staffing and workforce matters to ensure the continued performance of the service, including Safety; Health; Environment and Quality of provision.

6. Liaise regularly with the workforce and the Union representatives to ensure matters identified are addressed/ resolved where appropriate for the enhancement and operation of the service.

Signed

Wendy Simon - Deputy Mayor

Director & Chair of Liverpool Streetscene

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Nottingham City Council

Report in the Public Interest concerning the Council's governance arrangements for Robin Hood Energy Ltd

Nottingham City Council

Report concerning the Council's governance arrangements for Robin Hood Energy Ltd

Summary

We are issuing this report as a Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014. The Council is required to publish this report as soon as practicable, consider it at a meeting held in public within one month of the date of publication and provide a publicly available written response to us.

The Council set up Robin Hood Energy (RHE) in 2015 as a wholly owned not-for-profit subsidiary, in order to tackle fuel poverty in the City of Nottingham and provide a realistic alternative to the 'big 6' energy suppliers. As part of this, it aimed to provide better terms to users of pre-payment meters, who are more likely to be below the poverty line and cannot access the variety of discount arrangements offered to other customers of the big six suppliers. As expected, the Company made losses in its early years but reported a small profit of £202,000 in 2017/18 (although this was subsequently amended to a loss of £1.6m as a result of a prior period adjustment as part of the 2018/19 audit). In 2018/19, it made a large loss of £23.1m, giving it cumulative losses to 31 March 2019 of £34.4m. These losses were caused by a number of factors including:

- Volatility in wholesale energy markets which impacted on all energy retailers
- Price cap changes by the regulator, Ofgem
- The need to increase the provision for doubtful debts by £2.6m (more than trebling it) following an increase in debtors, implementation of a new accounting standard and continuing difficulties in collecting old debt in the year, which was partly due to insourcing a previously outsourced debt management service.

Despite having concerns about the quality of the financial information being produced by the Company, its deteriorating financial performance and therefore its ability to make repayments, the Council decided to make significant additional loans to the Company on several occasions during 2018/19 and 2019/20. Had it not done so, the Company would have immediately failed, and the Council would have lost most of the value of its existing stake in it, with £47.4m at risk at the time when the largest loan was requested in October 2019. The Council faced a choice between two highly undesirable alternatives, a scenario brought about in large part by its own inadequacies in holding the Company to account.

This position stemmed from a range of factors:

- The setting up and operation of an energy company is hugely ambitious, given the highly complex, highly competitive and highly regulated markets in which energy companies operate, and the impact which external global factors can have on pricing. Some aspects of RHE – particularly its focus on low tariffs and poorer customers – further increased these risks.
- The governance arrangements which the Council has had in place were not strong enough, particularly given the nature of the Company and its markets:
    - There was an insufficient appreciation within the Council (as a corporate body) of the huge risks involved in ownership of, and investment in, RHE
    - There was insufficient understanding within the Council of RHE's financial position, partly due to delays in the provision of information by RHE and the quality and accuracy of that information
    - There was insufficient sector (or general commercial) expertise at non-executive Board level

  - There was a lack of clarity in relation to roles within the governance structure
  - The arrangements did not establish an appropriate and consistent balance between holding to account and allowing the Company freedom to manage, and this worsened as levels of trust decreased and the financial position deteriorated.
- Overall, the governance arrangements were overshadowed by the Council's determination that the Company should be a success, and this led to institutional blindness within the Council as 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.

Improvements have been made to the governance arrangements over the past year, but have been too late to protect the Council's finances. These have included the setting up of an internal RHE Steering Group, chaired by the Council's Chief Executive, an officer Shareholder Board and more recently the bi-monthly Companies Governance Sub-Committee, chaired by the Leader of the Council, with the latter two developments covering all the Council's companies.

Because of the poor financial performance and prospects of RHE, and hence the reduced likelihood of loans being repaid and any future realisation of the value of its £7.5m shareholding, the Council has had to impair (reduce the value of) these loans and the shareholding in its accounts. It has also had to increase the value of the liability disclosed in its accounts for the Parent Company Guarantees, totalling £15m, which it has entered into with RHE's suppliers, because the risk of them being 'called in' has increased.

The Council has now amended its 2018/19 accounts to reflect what amounts to a 'loss' of £24.4m This will have a direct impact on the Council's financial reserves and leave it with a need for more challenging savings plans. A further loss of over £8m will be incurred in the 2019/20 accounts, while depending on decisions which have yet to be taken about the future of the Company, it is likely that a further significant loss will be incurred in 2020/21. Despite the escalating situation, the Council's Leadership has only very recently reacted vigorously to the situation and moved away from what had felt to be a determination to continue at any cost. This is not how local authorities should look after large amounts of public money.

The Council has a controlling interest in a range of companies and other organisations. While it has been working to improve the governance arrangements across these companies, and make them more consistent, this progress has been very slow and its benefits are not yet being reflected. The Council needs to ensure that lessons are learned from the experience of RHE and further improvements made across all the Group. Some of these companies are successful and appear well-run, but this does not eliminate the need for strong governance arrangements within the Council.

The Council also needs to reflect on the RHE experience in relation to its overall governance arrangements, and ensure that sufficient effective safeguards are built into these to ensure that policy initiatives are appropriately challenged and risks properly understood and managed, in the context of the Council's overall strong ambitions for the City of Nottingham.

Recommendations

This report makes a number of recommendations for the Council to address. A Strategic Review is already underway to determine the future of RHE, and the most important steps for the Council to take now involve applying the lessons from RHE across the wider group. In this regard, we would particularly highlight recommendations 2 and 3 in relation to the composition of company boards, recommendation 8 in relation to further strengthening monitoring arrangements and recommendation 12 in relation to applying the lessons to the Council's overall governance.

R1. Using the current Strategic Review and other appropriate advice to assist with decision-making, the Council should urgently determine the future of RHE, with options properly evaluated and risks properly assessed. This assessment should also take into account the context of the Council's current financial position.

R2. The Council should review its overall approach to using councillors on the boards of its subsidiary companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company Board members.

R3. Where it continues to use councillors in such roles, it should ensure that the non-executives (including councillors) on the relevant board have, in aggregate, the required knowledge and experience to challenge management. This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of councillors.

R4. Where councillors are used in such roles, the Council should ensure that the councillors are provided with sufficient and appropriate training which is updated periodically.

R5 The Council should ensure that all elements of its governance structure, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals.

R6. When allocating roles on Council-owned organisations to individual councillors, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them.

R7. The Council should ensure that risks relating to its companies are considered for inclusion in its overall risk management processes, with appropriate escalation and reporting, rather than being seen in isolation.

R8. As the new arrangements for monitoring companies are rolled out alongside the Companies Governance Sub-Committee, the Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Sub-Committee and others involved in holding the companies to account, and that robust action, with the oversight of the s151 officer, is taken if suitable information is not provided.

R9 Within the new arrangements involving the Companies Governance Sub-committee, the Council needs to ensure that responsibilities for scrutiny and risk management are given sufficient prominence, including giving the Audit Committee explicit responsibility for scrutiny of governance and risk management across the group.

R10. In addition to those referred to in recommendations above, the Council should apply the lessons from RHE in a further review of its company governance arrangements, in particular to ensure that risks are appropriately flagged and managed, as well as successfully implementing the more robust monitoring agreed by the Companies Governance Executive Sub-Committee.

R11. As part of this review, the Council should consider the appropriateness of the definition of the shareholder role adopted in the 2019 report and give it an emphasis on protection of the Council's financial interests alongside other elements.

R12. The Council should use the experience of owning RHE to consider whether there are any lessons for its wider governance, particularly in relation to the 'checks and balances' which need to be in place, including the need for a stronger monitoring and scrutiny function and moving to a culture in which challenge of political priorities and how they are being implemented is seen as a positive.

R13. The Council should ensure that it reflects the financial pressures arising from RHE alongside those from covid-19, demand-led services and other areas to produce balanced and achievable financial plans for the current year and for the medium-term, without disproportionate, unsustainable reliance on one-off measures.

Introduction

We are issuing this report as a Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014. The Council is required to publish the report as soon as is practicable, consider it at a meeting held in public within one month of the date of publication and provide a publicly available written response to us.

Background

The Council set up Robin Hood Energy (RHE) in 2015 as a wholly owned not-for-profit subsidiary, in order to tackle fuel poverty in the City of Nottingham and provide a realistic alternative to the 'big 6' energy suppliers. As part of this, it aimed to provide better terms to users of pre-payment meters, who are more likely to be in poverty but do not receive a good deal from the regular commercial suppliers.

The original business case which led to the setting up of RHE stated that the company would require an investment of £8.1m and would stand cumulated losses of £3.8m before moving into profit in year 4 (2018/19). It envisaged that the Company would need to attract significant external investment as it grew.

While the policy focus was primarily on serving the people of Nottingham, we understand it was always clear that in order to be competitive, and to provide a realistic alternative to the 'big 6', the Company would need to operate on a more national basis. In early 2017, RHE entered into a partnership with EBICO, another not-for-profit energy supplier operating across the country with similar aims to RHE, while it has also entered into deals with various 'white label' companies, many of which are linked to specific local authorities. RHE also grew its customer base by focusing on 'void switchers' (arranging supplier switches in vacant properties), both directly and through the white label companies.

As a result, RHE has grown at a rapid rate in terms of turnover and meter points served (Table 1) but has been far less successful in terms of its profit and loss position, with cumulative losses of £34.4m to 31 March 2019, the most recent date for which audited accounts are available.

Table 1
Robin Hood Energy financial results

	2015/16	2016/17	2017/18*	2018/19
Turnover	£4.6m	£25.9m	£69.0m	£97.9m
Profit/(loss)	(£2.5m)	(£7.2m)	(£1.6m)	(£23.1m)
Meter points			168,000	220,000

* The accounts for 2017/18 were restated following the 2018/19 audit, converting the previously reported profit of £202k to a £1.6m loss.

Table 2 below demonstrates how the Council's financial commitments to RHE have grown since its inception, with the gross liability at 31 March 2020, including guarantees, being £59.6m. In effect, the Council had invested £43m of public funds into RHE, and risked a further £16.5m in the form of guarantees.

Table 2
Council liabilities in respect of RHE (gross values, £m)

	31/3/16	31/3/17	31/3/18	31/3/19	31/3/20
Shareholding	0**	0**	7.5	7.5	7.5
Loans	2.3	9.5	11.7	20.2	31.8
Prepayments	0	0	0	3.9	3.9
Parent company guarantees	0	7.0	12.0	12.0	16.5
Pensions guarantee	0	0.7	0.7	0.7	0
Total*	2.3	17.2	31.9	44.3	59.6

* In addition, the Council provided uncapped letters of comfort in respect of 31 March 2016 to 2018, and a letter capped at £12.5m for 31 March 2019.
** The Council held a single £1 share on 31/3/16 and 31/3/17.

Scope

The events described in this report are complex and involve a wide range of individuals in various roles across the Council and the Company. While we have legal powers to comment on RHE as a 'connected entity' of the Council, our focus has been primarily on the Council and its own governance arrangements in relation to RHE. The Company became operational in 2015, well before we were appointed as the Council's external auditors, and we have not sought to assess the original decisions to set the Company up, including the compilation of the business case. Inevitably, though, some of the risks that we comment on were inherent to the original decision-making.

Summary of events

While our findings are focused particularly on the Council's governance arrangements, in order to understand our concerns about governance, it is necessary to understand the sequence of events in the Council's relationship with the Company over the past two years, and the key points are set out below.

We were appointed as the Council's external auditors with effect from April 2018. Shortly after that, the Company celebrated its first profit, having made a reported surplus of £202k in 2017/18 (although this was subsequently amended to a loss of £1.6m as a result of a prior period restatement agreed in the 2018/19 audit). The Company was securing growth through the acquisition of 'white label' companies, often linked to other local authorities, through which it sold energy in various parts of the country. To finance this growth, RHE negotiated with the Council to convert £7.5m of debt to equity shareholding in January 2018, giving it a more favourable balance sheet position and meaning that it no longer had to pay principle and interest on the debt, but taking it beyond the assumptions set out in the original business plan.

Since that time, the relationship between the Council and RHE has been under increasing strain, due to:

- the Council not authorising RHE to proceed with two proposed acquisitions in January 2018 and January 2019, which the Company maintained would have helped to cushion the impact of market pressures and hence to improve its financial position but for which Council officers maintain they were not provided with adequate formal proposals and business cases, and in the context of the Company not having provided the Council with up-to-date and reliable management accounts
- an at times rapid and unpredicted deterioration in the Company's financial position in terms of both profit and loss and cash. We appreciate that 2018/19 was a particularly difficult year for all energy suppliers due to market and regulatory

changes, but the Council was not properly sighted on the impact of this on RHE's performance or the security of its own loans and investments.

- issues arising from the audit of the Company's 2018/19 accounts, which led to tension over the request by RHE for an uncapped 'letter of comfort' from the Council as well as significantly delaying the production of the Council's final Statement of Accounts for 2018/19, which have necessitated a large number of amendments in respect of accounting for its relationship with RHE.

Additional loan – Dec 2018

In late 2018, RHE approached the Council for an additional £5m loan, in two tranches, to assist with its cash position over the winter. This was discussed at a meeting between RHE executives and relevant Council officers on 11 December 2018. At that time, the Council had the preliminary findings from PwC from a review of RHE's finances, and these flagged up significant concerns with the Company's financial performance in the first 6 months of 2018/19, its underlying cash position and the quality of its financial forecasts. The notes of the meeting record that the PwC views were discussed and recognised as early feedback, with a need for more input from RHE officers. They also record that the loan was agreed, subject to the need for a formal Council decision. The Strategic Director of Finance expressed concerns at that time about the risks involved in making the loan and the inadequacy of information provided by the Company. She was also clear that the normal level of assurance could not be provided from due diligence work because of the short timescales necessary and the continuing difficulties encountered in obtaining the necessary information from RHE. These concerns are well-documented in the decision-making report.

The notes also refer to the Council's concerns about the governance of RHE, and an action is noted for the Council's Director of Legal and Governance to carry out a review of it. It is not clear that this requirement was ever communicated to the Director of Legal and Governance and no specific review of RHE governance was carried out, although he was already involved in work to review company governance across the Council (as described later in this report). It would appear, though, that the fact that an RHE-specific review was not carried out at this stage was one of several missed opportunities to address the significant issues.

Overdraft facility – Jan 2019

In addition to the need for the new loan outlined above, the Company was seeking to agree an overdraft facility with its bank, but negotiations collapsed because the Council could not provide a copy of a particular document to be shared with the bank: as part of its due diligence process, the bank requested a copy of the record of the portfolio-holder decision to enter into parent company guarantees. As the report and the decisions made were exempt from publication by virtue of Paragraph 3 of Schedule 12A of the Local Government Act 1972, disclosure of those reports to Lloyds and their legal advisors would have given them more information than warranted to enable Lloyds to make a decision over a £3m overdraft. In that context the bank's legal advisors were offered a redacted version of the report. That was not acceptable to the bank.

Instead, the Council agreed to provide a short-term additional loan of £3m, due originally to be repaid within 3 months, although this expectation was not formally documented and appears not to have been communicated to RHE executives. In the event, this loan has not been repaid, and was converted to a long-term loan as a result of a decision of the Council's Executive Board in December 2019.

Proposed acquisition – Jan 2019

RHE entered into negotiations to acquire Our Power, an energy supplier with around 31,000 customers which collapsed in January 2019. RHE negotiated a purchase price of £1 but in order to be able to forward purchase energy for the increased customer base, RHE sought an additional Parent Company Guarantee (PCG) of £3m from the Council. The Council initially approved the acquisition, but subsequently, on the advice of the Strategic Director of Finance, rejected it because it believed that insufficient justification had been provided for the acquisition – indeed no formal written proposal was ever presented to the Council - and that the associated risks were too high. Our Power therefore went into the Supplier of Last Resort (SoLR) process instead.

This was the second occasion on which the Council had not authorised an acquisition which the Board of RHE supported, with the first having been a smaller opportunity in January 2018. The fact that the Our Power proposal was the second such example significantly worsened the relationship between the Council and RHE, putting strain on the governance arrangements. We understand that there were also disagreements in relation to proposals to secure additional external investment.

RHE 2018/19 audit – May 2019 onwards

The next significant events were related to the audit of RHE's 2018/19 accounts. The Company was due to produce draft accounts in May 2019 to form the basis of the Council's group accounts, with the audit of RHE then due to be completed in time for the final version of the Council's accounts, due to be signed off by us by 31 July 2019. Draft accounts were duly produced, showing a loss of £11.4m. RHE executives made clear to us and to Council officers that they did not wish this loss to be overtly referenced in the Council's accounts, because they did not want the market to be aware until later in the calendar year when, they hoped, the Company's performance would have improved. The Company would still be able to meet its own statutory deadline for filing its accounts of 31 December 2019. While we understand the reasoning, this discussion provides a good example of the potential conflicts between the commercial imperatives of running a company in a highly competitive market and the accountability requirements from being owned and funded by a public body.

In the event, difficulties in the audit process meant that the audit of RHE took around 10 months to complete, and to avoid being fined for late filing of its accounts at Companies House, RHE took a decision on 24 December 2019 to shorten its accounting period by one day, which automatically gave it another 3 months from that date to file its accounts.

During the lengthy period of the audit (May 2019 to March 2020), the relationship between the Company and the Council deteriorated, with the Company's request to the Council for an uncapped 'letter of comfort' being the main focus of the conflict. Where companies' auditors have concerns about whether a company has sufficient cash to meet its ongoing liabilities (ie about whether or not it is a 'going concern'), it is normal for them to ask the company to obtain some form of letter of comfort or even Deed of Guarantee from a parent organisation, in order for the directors to be able to prepare the accounts on a going concern basis, with this judgement having a significant impact on the valuation of the company's balance sheet. The Council had provided the Company with an uncapped letter in previous years, meaning that the Council was in effect agreeing to meet any liabilities the Company incurred. We expressed concerns about whether this was appropriate, especially given the Company's deteriorating cashflow position, and there was a process of negotiation between the Council and the Company about what level of financial support would be sufficient to allow the Company to be signed off as a going concern, and also whether the letter of comfort could be issued as a legally binding Deed of Guarantee.

Throughout this time, the Company was accusing the Council of delaying the audit by not providing the letter of comfort while the Council was not prepared to provide a letter of comfort because the Company had not provided it with appropriate cashflow forecasts to enable the Council to properly consider the level of financial support requested. In turn, the Company asked for a copy of the PwC report to feed into its considerations, and there were delays in this being provided to the Company. Amongst other occasions, this disagreement was demonstrated in successive meetings of the Council's Audit Committee in the Autumn of 2019, including a meeting at which the Committee had requested the Chief Executive and Managing Director of RHE to attend and explain the reasons for the delay in the finalisation of RHE's accounts.

In reality, issues concerning the letter of comfort did not lead to the delays in the audit – BDO made clear to us that there were a range of outstanding audit queries throughout this time waiting to be resolved between themselves and the Company.

BDO also had their own concerns about the robustness of the Company's cashflow forecasts, and took the unusual step of writing personally to each individual member of the Board on 2 December 2019 setting out their requirements in relation to the assessment of going concern and expressing concern about the delays in providing the information requested. The letter concluded by reminding each director of their statutory responsibilities as a director and suggested that they should take legal advice. This action by the auditor is very rare in the context of a local authority company and reflects poorly on the Company's governance and in turn on the Council's governance arrangements for the company.

Renewables Obligation – October 2019

A very significant cashflow crisis occurred in October 2019. As part of the regulatory regime established by Ofgem, energy companies which do not obtain green energy directly have to either trade their obligations with a green energy supplier or pass on to Ofgem, for redistribution, the premium which customers pay to them as part of their tariffs. This arrangement is known as ROCs (Renewable Energy Obligation Certificate) and for 2018/19 for RHE amounted to £9.5m.

ROCs payments had to be made to Ofgem within 6 months of RHE's financial year end. RHE's management were aware over the summer of 2019 that, although the majority of the cash for paying the ROCs had already been received from customers, it had been absorbed into the Company's wider cash position and was not available to make the payment. The need to make the significant payment was discussed by the Board, and hence known by councillors and the shareholder representative, but the Board was told by RHE executives that they intended to negotiate an instalment payment plan with Ofgem, and provided assurances that there was no cause for concern. This view was based on informal discussions with Ofgem and an understanding that other suppliers had been granted payment arrangements. Despite its potential magnitude, there is no evidence that this issue was flagged as a major concern within the Council by the shareholder representative or anyone else.

In the event, Ofgem were not willing to accept a payment plan and issued a statutory notice on 1 October threatening RHE ultimately with the loss of its licence if the ROCs payment was not made in full within 30 days. At this point, RHE approached the Council to ask for an urgent loan of £9.5m to enable it to make the payment.

This sudden request put Council officers in a very difficult position, and we had a number of discussions with officers at the time as to whether or not making the additional loan was sufficiently rational as to be lawful. At the time, the Council had not received management accounts from RHE for several months, the 2018/19 audit of RHE was still in progress and a number of significant issues were coming out of it about the company's finances. There was a significant risk that the Council was simply investing more public money into a failing company, but there was insufficient time to carry out meaningful due diligence research into RHE's finances.

However, the alternative was that, if the ROCs payment were not made, suppliers and customers would lose faith in RHE, with the result that rapid failure of the company could follow, and the Council would lose the value of its holdings in RHE and have to pay out on the Parent Company Guarantees, with a total potential loss highlighted by the Strategic Director of Finance of £47.4m.

As part of discussions, RHE provided the Council with an update on its financial position, in order to provide assurance that the risk of making the further loan was limited. This presentation stated that RHE was expected to make a profit of £3m in 2019/20 and provided a cashflow forecast which suggested that the £9.5m could be repaid in full by 31 March 2020, although this was the base case and there was a 'worst case' included which did not include repayments in this timescale.

In the event, officers determined that the loan could be made lawfully, because minimising the risk of immediate failure of the company was a reasonable, if unfortunate, justification. We did not disagree with this view. The additional £9.5m was provided to RHE at a market rate of interest, with payment of principal due to be made in its entirety by 31 March 2020. In the event, no principal repayments were made by that date because the Company did not have the cash available, and the forecast profit for 2019/20 has since become a £12m loss.

As part of the discussions on this crisis, the Council's Strategic Director of Finance commissioned PwC to carry out further investigations into RHE's finances. To strengthen governance arrangements within the Company, the Council arranged for one of its own solicitors to take up the Company Secretary role for RHE, and for its own Committee Services team to start minuting Board meetings. The shareholder representative was removed from the role by the Chief Executive and the role was given instead to the Corporate Director of Development and Growth.

It was because of this crisis that we took our initial formal audit action as set out in the Annex to this report, resulting in us making formal recommendations to the Council and discussing our concerns with the Council's Executive Board on 17 December 2019. Even at this stage, it did not appear that the Council fully recognised the magnitude of the risks that it was facing.

Additional loan request Nov/Dec 2019

Having categorically assured the Council in negotiations in October 2019 that there would not be any need for further cash injections, the Company again approached the Council on 12 November 2019, only three weeks after the Executive Board had granted the ROCs loan, with a further urgent request for an additional loan of £4.5m. This raised the same issues in terms of lawfulness as did the previous request, but by this time the Council had received PwC's report commissioned as a result of the previous loan request. This concluded that:

- RHE would require further cash support from the Council in future;
- the Company's cashflow forecasts had a number of assumptions and sensitivities within it totalling between £18 and 22m, amounting to around 20% of RHE's annual turnover;
- a detailed review of the debt position of the Company was required;
- a shortfall in income collection following the insourcing of the previously outsourced debt collection function had led to the deteriorating cash flow position of the Company;
- the current quality of financial planning and reporting and control at RHE was not giving the Council adequate foresight of underperformance in relation to financial results.

Following further discussions, it was determined that the immediate need for the loan could be avoided if the Council agreed to increase the percentage coverage of losses under the Parent Company Guarantees from 80% to 100%, thus increasing the Council's maximum exposure by £3m (from £12m to £15m). However, due to the uncertainties felt to be within RHE's cashflow forecasts, the Strategic Director of Finance obtained delegated authority from Executive Board on 17 December for an additional loan of £2.7m, to be drawn down if needed. This loan was provided to the Company in February 2020, in addition to the increased PCG coverage.

Recent events

In December 2019, the Board of RHE decided to suspend the Company's Chief Executive and its Managing Director of Finance. The Board, with assistance from the Council, secured an interim Chief Executive and an interim Director of Finance, initially for a period of three months but this has been extended. At the same time, the Council secured the services of a specialist energy consultant – who has held senior positions in major energy suppliers – to act as a retained advisor.

The audit of RHE's 2018/19 accounts was eventually finalised on 24 March 2020, with the loss of £11.4m reported in the initial draft accounts in May 2019 (and used in the draft of the Council's accounts) having increased to £23.1m. The original draft was predicated on a positive outcome to discussions on a number of accounting issues totalling £7m in value. The Council provided a letter of comfort capped to a value of £12.5m, based on the expected ROCs payment due in September 2020, and taking into account the cashflow forecasts prepared by the new interim management, which Council officers considered to be more robust and understandable.

The audit report included a 'material uncertainty' on going concern, drawing the reader's attention to the disclosure notes in the accounts around the existence of the 'letter of comfort' and the fact that RHE is only a going concern because of the Council's financial support.

Following the confirmation of RHE's financial results for 2018/19, the Council commissioned different consultants to explore options for the future of the Company, including seeking bids from the market. This process is still in progress: the Council is not committed to disposal, but obtaining information as to the current value of the Company in the market is clearly helpful in discussions about its future.

As we have previously made clear, the Council is entitled to make the policy choices that it has made in relation to RHE, and it is not for us as auditors to substitute our judgement for that of elected councillors. However, as with all the legal powers which local authorities are given, the power to invest in companies needs to be exercised reasonably, balancing the costs and risks against the benefits to local people and the local area. While we appreciate that the policy objectives of RHE, particularly those around tackling fuel poverty, are laudable, we question whether the costs already incurred and the continuing risks of the Council's involvement in RHE can now be seen as reasonable.

R1. Using the current Strategic Review and other appropriate advice to assist with decision-making, the Council should urgently determine the future of RHE, with options properly evaluated and risks properly assessed. This assessment should also take into account the context of the Council's current financial position.

The Council's governance arrangements for RHE

While we acknowledge the clear improvements made over the past year or so, overall, the Council's governance arrangements for RHE were not strong enough, especially given the specialist nature of the Company and the challenging and highly regulated markets in which it operated. In particular:

- There was an insufficient appreciation within the Council (as a corporate body) of the huge risks involved in ownership of, and investment in, RHE
- There was insufficient understanding within the Council of RHE's financial position, due to delays in provision and the quality and comprehensibility of the information provided
- There was insufficient sector (or general commercial) expertise at non-executive Board level
- There was a lack of clarity in relation to roles within the governance structure
- The arrangements did not establish an appropriate and consistent balance between holding to account and allowing the Company freedom to manage, and this worsened as levels of trust decreased.

Overall, the governance arrangements were overshadowed by the Council's determination that the Company had to be a success, and this led to institutional blindness in the Council as a whole to the escalating risks involved and to very significant risks to Nottingham taxpayers' money. The Strategic Director of Finance gave formal advice on numerous occasions, but this was not sufficiently heeded.

Roles and responsibilities

RHE Board

The governance arrangements for RHE were not dissimilar to those in operation in the Council's other companies. The Board of RHE was set up to be chaired by a councillor and with other councillors on the Board ensuring a councillor majority, but with no opposition councillors. Indeed for a fair proportion of its life, councillors have been the only non-executive Board members. For some of RHE's existence, but not recently, the Council's former portfolio holders for energy have been on the Board and the portfolio holder was chair until 2017. The Leader of the Council was also on the board from May 2016 to December 2018.

Between October 2017 and July 2019, the Chief Executive of EBICO also sat on RHE's Board, bringing additional expertise independent of the executive directors. Since he left the Board, there has been no-one with energy expertise to challenge the executives, although as noted above, a special advisor was brought in from December 2019 onwards, but is not a Board member. Longer ago, there was also a different special advisor in place between July 2016 and July 2017.

Overall, we do not think that the composition of RHE's Board has been conducive to good governance. A company operating in a highly competitive, highly regulated market needs non-executive members who understand that environment. It is clear that councillors who have been on the Board of RHE have taken their roles seriously and sought to understand that environment, but this is no substitute for having gained direct experience in that or a similar environment. While they were equipped to challenge the executives on more generic issues, it was not reasonable, given their backgrounds, to rely on them to be able to provide sufficient scrutiny of the operation of the Company, or to understand its finances. The availability of special advisors during 2016/17 did help to mitigate this, as has that since December 2019.

There were also risks in having the Chief Executive of EBICO on the Board, given that EBICO are in effect a customer of RHE, and at times the interests of RHE and EBICO would not be the same, although we have no evidence that this led to any specific issues.

The previous inclusion of the Council's successive executive councillors with the energy portfolio on the Board brought advantages in that the portfolio holder would be expected to understand more than other members about energy-related issues, and it provided a direct link from the leading group of members into RHE, as did the inclusion at certain times of the Leader and/or Deputy Leader of the Council. This helped ensure that the Council's policy priorities were being pursued and that the Company's aims were congruent with those of the Council. However, the strength of this linkage may also be a contributory factor in why governance and financial risks appeared to be given less of an emphasis. The Company became a de-facto extension of the Council.

More generally, it is not seen as good practice for councillors to be on the boards of local authority companies, with other mechanisms used to ensure that the company meets the Council's policy objectives. This reflects the above issues in relation to the expertise and experience of many councillors, and the potential for conflicts of interest between the councillors' commitment to the interests of the company, which has to override other interests when they are on company 'business', and their wider responsibilities as councillors. Having councillors on company boards can lead to a failure to properly separate the two sets of interest – of the company and of the Council – and it appears that this occurred in relation to the expectation that the Council would continue to fund RHE indefinitely.

While there is no evidence of such conflicts leading to any impropriety in relation to those councillors on the RHE Board, the difficult relationship between the Council and the Company, and the decisions faced in respect of increased council fnding for the company during 2019, put the councillors into difficult situations.

As a minimum, the Council needs to consider the appropriateness of being as reliant as it is on councillors sitting on the boards of its companies and ensure that the boards have an appropriate level of sector-specific and commercial knowledge and experience; there may be some companies for which a higher proportion of councillors can still achieve this, although such arrangements still present risks around potential conflicts of interest. For a Company operating in a very specialised and regulated market like RHE, the proportion of outsiders with experience clearly needs to be higher.

The Council has offered training to its members who serve on the boards of its companies, but we were told that further training was needed. Overall, the Council needs to be aware that being on the board of a company, and especially one operating in a complex and highly-regulated market, with a turnover of around £100m and outside the Council's normal course of business, is a significant role which requires particular skills, experience and training.

R2. The Council should review its overall approach to using councillors on the boards of its subsidiary companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company Board members.

R3. Where it continues to use councillors in such roles, it should ensure that the non-executives (including councillors) on the relevant board have, in aggregate, the required knowledge and experience to challenge management. This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of councillors.

R4. Where councillors are used in such roles, the Council should ensure that the councillors are provided with sufficient and appropriate training which is updated periodically.

Shareholder representative

For each company, the Council designated one of its senior officers as 'shareholder representative', with the intention that this individual ensured that the Council's (as shareholder) best interests were served and protected. For RHE, the shareholder representative was the Corporate Director Commercial and Operations, until October 2019 when he was replaced by the Corporate Director for Development and Growth. The role of the shareholder representative was not formally defined but was understood to require a balance between ensuring that the Council's policy aims were being achieved through the Company and also ensuring that the Council's financial stake in the Company was secure. It required effective two-way communication, and in relation to protection of the Council's interests required concerns to be raised with other senior Council officers, such as the Executive Director for Finance and the Council's Director of Law and Governance.

In practice, the shareholder representative role does not appear to have operated as the focus of the relationship between the Council and the Company. For example, when requests for financial assistance were made, these were made through an approach from RHE executives to the Council's Strategic Director of Finance, who then brought in other officers as appropriate – we would have expected the shareholder representative to be the primary focus for such requests and for him to discuss them with other Council officers. Conversely, we would have expected the shareholder representative to be the one applying pressure to the Company to provide appropriate financial information to the Council, but the Strategic Director of Finance in practice took the lead on this.

On the face of it, this may not appear to have significant practical consequences. However, not having a shareholder representative acting as a clear focal point for the relationship it is part of an overall situation in which the distinction between the Council and the Company was very blurred, with multiple communication channels (including those between councillors on the Board and the Council leadership, company MD to Council Strategic Director of Finance etc) and no clear overall mechanism for holding the Company to account. A properly defined shareholder representative role should have been the focus for that relationship and the channel through which the Company was held to account.

As the focus of the relationship, the shareholder representative role is ideally placed to be the Council's 'eyes and ears' in the strategic management of the Company, and in particular to highlight emerging risks (to the Council), referring these to other appropriate Council officers such as the Strategic Director of Finance and the Monitoring Officer, and ensuring that the Company is addressing these risks. The scale of the financial risks which emerged in relation to RHE, and the speed at which they emerged, suggests that the shareholder representative role did not fulfil this purpose.

Irrespective of the lack of clear definition of the shareholder representative role, we would expect any senior local government officer to recognise the very significant risks to public money which RHE came to represent, and to ensure that they were highlighted and to champion mitigation of those risks. We are not suggesting that the shareholder representative failed to identify the risks at all, but he appears to have not attached sufficient seriousness to them and to have prioritised instead the element of the role which was aimed at ensuring the success of the Company in accordance with political priorities. Arguably, this may be part of a more general tendency, which we ask the Council to reflect on later in this report, for legitimate challenge of political priorities to be viewed as inappropriate.

R5 The Council should ensure that all elements of its governance structure for companies, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals and are adhered to.

Shareholder meetings

In addition to RHE Board meetings, shareholder meetings were also held. These comprised a mix of Council officers and RHE Board members and were intended to ensure that a wider range of Council officers and members were aware of the issues being faced by RHE and the associated decisions. However, these meetings ceased formally in March 2019 in anticipation of the new arrangements being put in place following a review of company governance across the Council – but in the event the replacement member forum was not put into place properly for around 9 months. This should, however, have been mitigated by the existence of the shareholder role and the fortnightly meetings of the Steering Group.

Linkages between the Company and leading councillors and senior officers also existed through less formal means, with a range of ad hoc meetings taking place. These were strengthened in February 2019, when the Council's Chief Executive started leading a more frequent RHE steering group. When Cllr Mellen became Leader in May 2019, he and the Chief Executive agreed these meeting should be continued and they would alternate fortnightly meetings of officers and then member meetings with the Leader chairing the latter. Over time these meetings have merged into one the RHE Steering Group, solely chaired by the Leader.

For many councils, shareholder meetings are the key means through which subsidiary companies are monitored and overseen, particularly given that, as noted above, the inclusion of councillors directly on the boards of companies is not seen as good practice.

Audit Committee

We had specific concerns about the role of the Council's Audit Committee in relation to RHE, during 2019 in particular. As the member body responsible for oversight of governance, it should have been better sighted on the developing issues in relation to RHE. The Committee had previously identified the need to improve arrangements for the governance of companies in general, leading to the developments later in this report, and we are aware that some of its members did have concerns about RHE. However, the Committee did not pursue those concerns until we started reporting the emerging outcomes from our 2018/19 audit and the delays in RHE's audit.

An additional complication was that the then Chair of the Board of RHE was also the Chair of the Audit Committee from May 2019, leading to a very clear conflict of interest which took some time to resolve. With the Audit Committee in effect being part of the mechanism for holding RHE to account, at least in relation to governance, it was inappropriate for the Chair of the Board to also be Chair of that Committee. This was dealt with by the individual declaring an interest in the relevant items at Audit Committee, and handing the chair over to his deputy, although shortly after this, he ceased to be chair of the RHE Board. We are not suggesting that there was any actual impropriety on the part of the individual concerned but the arrangement potentially put him in a difficult position.

R6. When allocating roles on Council-owned organisations to individual councillors, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them.

Overall governance

A successful relationship between a local authority and its subsidiary companies relies on achieving an appropriate balance between the authority on the one hand being sufficiently involved to hold the company to account and on the other hand giving it freedom to manage itself. Where the balance lies will vary between companies and over time, depending on the nature of the company and its performance, but this has to be in a clear framework and to be linked to the governance roles and structures that are put in place. Ordinarily, a council would set the overall aims of a company and approve its business plan and significant variations from it, and then monitor performance against this business plan by means of an agreed framework.

As part of an overall review of company governance arrangements (see later section of this report) instituted at the request of the Audit Committee in July 2017, the Council established a set of governance principles, reported 18 months later in February 2019, which sought to establish the framework for achieving this balance. The length of time taken to undertake this review and implement the improvements represents an important missed opportunity to address the governance of both RHE and other Council companies.

In the case of RHE, there had always been a closer relationship between the Council and the Company, given the composition of the latter's Board and the transfer of existing Council employees to the Company. Inclusion of councillors as the main non-executives on RHE's board mitigated against the healthy levels of separation which are normally seen between authorities and their companies. In turn, the lack of separation meant that more consistent strategic performance management arrangements were not put in place. This lack of an overall framework was a key omission in the Council's governance arrangements for the Company, and the delays in putting the framework in place reflect the low priority given to achieving healthy governance arrangements at that time.

During 2019, the performance of RHE in any case meant that more direct Council involvement was justified. This was achieved to an extent through the Chief Executive's Steering Group, supported by an increased number of ad hoc meetings. Some efforts were made to 'reset' the relationship between the Council and the Company but these were not sustained, partly because of delays in RHE providing information on its financial performance, tension around the 'letter of comfort' and the very significant urgent additional funding requirements in October and November 2019.

Overall, many aspects of the governance arrangements which the Council put in place were not dissimilar to those put in place for many local-authority controlled companies both in Nottingham and elsewhere, but there were crucial differences:

- the number of councillors on RHE's board (all from the ruling group)
- the lack of an established overall monitoring framework

- the limited clarity and robustness of the shareholder role.

The key point in relation to RHE, though, is that its complex nature meant that it needed much stronger governance arrangements. Many local authority companies are set up simply to do through a different vehicle things which the Council already does – for example grounds maintenance or, in Nottingham's case, processing benefits claims. The skills to provide such services already exist in house and the markets for the services are, generally, far less complex and less competitive. It is not difficult for such companies to co-exist alongside a local authority with its public accountability and arrangements for safeguarding public money.

This cannot, however, be said for an energy company with a turnover of £100m. The next section of this report considers the risks that were inherent in the operation of RHE and the Council's arrangements for managing them.

Management of risk

From a Council perspective, there have always existed a wide range of risks in relation to RHE, from the point of view of both achievement of its policy aims and also protection of the Council's stake in the Company. It was always a high-risk project, in that it:

- sought to compete against established suppliers in a highly competitive market which was also susceptible to significant impacts arising from global economic and political events
- was conceived as offering low prices, thus requiring very tight control of costs and highly-effective purchasing of energy, in a complex market involving significant hedging, if it was ever to break even
- again because of its policy aims, had an inbuilt tension in relation to debt collection, with the normal debt collection policies of energy companies being seen as inappropriate as a means of tackling fuel poverty – but thus putting RHE at a competitive disadvantage. Similar competitive disadvantages arose because of the policy decision to implement the Warm Homes discount early.
- its target customer group were typically people who may need telephone support rather than web, and who were also more likely to be pre-payment meters or paying on receipt of a bill (rather than through regular direct debit), so that the 'costs to serve' were harder to keep low, and debt harder to control.
- was operating in a highly regulated market, where the energy regulator Ofgem has significant powers to revoke licences, set price caps and administer fines for breaches
- was set up as an 'offshoot' of the Council, using some key former Council staff, which meant it was culturally different to its competitors – perhaps an advantage in terms of its policy aims but a disadvantage in terms of effective competition. There were also related issues regarding the grading of posts within the Company.
- continued, as a local authority controlled company, to be bound be the additional governance and accountability requirements which rightly apply where public money is used, which may again have placed it at a disadvantage against its competitors.

Given these risks, it was vital that RHE had effective risk management arrangements in place and that, in turn, the Council had assurance that risks were being managed and that it managed the risks it faced itself as a result of owning the Company. Managing these risks was in itself made more difficult by the fact that RHE was operating in an environment of which local government officers had little knowledge and could not be expected to have such knowledge and experience. The level of the risks faced by the Council only increased as RHE expanded and the Council's stake in it increased. A key additional factor in managing these risks is that the financial risks ultimately fall on the people of the City of Nottingham, but RHE's customer base was national, albeit with preferential tariffs or discounts for Nottingham residents.

Overall, it appears that these risks have not been widely understood and managed within the Council as a whole, so that it did not perceive any prior warning of the significant deterioration in RHE's financial performance in 2019. Some of this deterioration was due to external factors, such as changes to the price cap regime and fluctuations in wholesale energy markets, but such risks should always have been identified and mitigated or planned for as far as reasonably possible. Other factors, such as the deteriorating debt position, and hence cashflow, should also have been a major focus of attention for those holding RHE to account, as well as to its management. While such issues have been discussed by RHE's Board, it is not clear that the Company's management were adequately challenged and held to account in that forum.

One specific opportunity which occurred for the Council to understand better, and mitigate, the risks it was taking occurred in the summer of 2018. Consultants, with significant energy sector experience, were commissioned by the Corporate Director Commercial and Operations on behalf of RHE, Bristol Energy, Nottingham City Council and Bristol City Council. This work was to assess the benefits which could be gained from closer working, and possible merger, between RHE and Bristol Energy, another local-authority owned energy supplier operating on a smaller scale than RHE. The report was considered largely by the shareholder representative and officers from Bristol City Council. However, other senior council officers were completely unaware of the report or indeed of the possible merger, and none of the messages within the report were shared among other Council officers, including with the Strategic Director of Finance.

This is significant because the report, produced by industry specialists, included findings which echo our views. Overall, it concluded that 'RHE's business model leaves it exposed to high costs and bad debt. Although the costs are being well managed and service levels are typical for the industry, the bad debt provision should be regularly reviewed, and the company needs to be confident around its appraisal of the risk related to its debt position.' It went on to suggest that RHE needed to:

- review its debt position and reassess the adequacy of the related provision
- tighten up financial reporting, including recognition of revenue
- increase the amount of energy expertise within RHE

In relation to RHE's future prospects, the report noted that:

'RHE has developed expertise in the low income and Social Housing Market. There are 5 million homes in social housing in Britain so there is plenty of market to win yet. This Business Model does have higher costs and although RHE have successfully broken even quite quickly, increased regulatory burdens from Smart, Price Caps, WHD (Warm Homes Discount) and ECO (Energy Company Obligation) will all add pressures to the business'.

It did also comment that RHE's basic operating model can be profitable and can deliver its objectives.

While the report resulted from an initial exploratory assignment and its conclusions should not be overplayed, we remain of the view, shared with current senior management of the Council, that this report was one of a number of missed opportunities to highlight risks identified in relation to RHE which subsequently had significant consequences.

R7. The Council should ensure that risks relating to its companies are considered for inclusion in its overall risk management processes, with appropriate escalation and reporting, rather than being seen in isolation.

Financial information

It has been a persistent concern for the Council's Strategic Director of Finance that the Council has not been provided with adequate financial information, and the information it has had has not been prompt. This was in part because the information, in the form of management accounts, was not being produced within the Company either, we understand due to staffing issues. We are aware that the Strategic Director of Finance raised her concerns over the lack of financial information persistently, but did not feel supported by the shareholder representative.

The low quality of financial information was also highlighted to the Council in at least two consultancy reports:

- As noted above, in the summer of 2018, one energy specialist consultancy reported as part of their report on a possible merger between RHE and Bristol Energy (another local authority owned energy company) that financial reporting needed to be improved, alongside a series of other improvements to RHE.
- In the autumns of 2018 and 2019, PwC reported as part of their assignments commissioned by the Strategic Director of Finance that the current quality of financial planning and reporting and control at RHE was not giving the Council adequate foresight of underperformance in relation to financial results.

This reflects the views of the Strategic Director of Finance and our experience of observing the unreliability and apparent 'optimism bias' within RHE's financial reporting and forecasts. While we recognise that recent years, and particularly 2018/19, have been difficult for all energy companies, the rapid deterioration in RHE's profit and loss and cashflow positions and the huge differences between predictions and outturn have been notable. Examples include:

- Within three weeks of being granted the additional £9.5m loan, RHE had to approach the Council again to request a further loan, despite having provided assurance that no further lending would be needed.
- The expected £3m profit for 2019/20 which RHE included in its presentation to the Council in October 2019 had become an expected £10.5m loss by late January 2020 (with the interim management in place)
- The cashflow forecast from October 2019 which predicted that the £9.5m loan could be repaid in full by 31 March 2020 was overoptimistic, as no principle repayments could actually be afforded within that timescale, although we note that the latter was foreseen in the 'worst case'.
- The Company said in November 2019 that it would not need any additional loans for the foreseeable future if the extended PCG coverage was agreed, yet the £2.7m loan which was approved at the time as a contingency (in effect without being requested by the Company) did have to be drawn down in February 2020 as the cash position deteriorated.

While the production of financial forecasts is a matter for the company and not the Council, it is vital for the Council's management of risks that the Council is presented with forecasts which it can understand and can rely on in order to advise members on appropriate action. This is the point which PwC were making in their report. The Council's governance arrangements, with their lack of clarity about roles and responsibilities and reporting lines, did not ensure that financial forecasts were appropriately challenged and understood. Such challenge appears to have been seen as a challenge of the legitimate policy objectives behind the company, rather than part of a healthy culture and governance systems in which challenge is welcomed and due regard is given the safeguarding public money, in this case that of Nottingham taxpayers.

The new arrangements being implemented by the Companies Governance Sub-Committee require the routine provision of financial information by all the Council's companies and are a positive development. What matters is not only that this information is provided, but that it is of an appropriate quality and is properly understood by Sub-Committee members and others charged with holding them to account, and that where information is not provided or is not understandable, robust action is taken to remedy the situation. We understand that this is starting to happen.

R8. As the new arrangements for monitoring companies are rolled out alongside the Companies Governance Sub-Committee, the Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Sub-Committee and others involved in holding the companies to account, and that robust action is taken, with the oversight of the s151 officer, if suitable information is not provided.

The council's governance arrangements for its other companies

In addition to RHE, the Council has controlling interests in a number of other companies and other organisations, giving it a much more complex group structure than most local authorities. The reasons for holding these companies vary, as does their lifespan. Nottingham City Transport has, for example, been a Council-controlled company for many years, having previously been part of the Council. Others have been set up more recently for specific purposes, including, in some cases, income-generation as part of the Council's 'commercialisation' agenda. The Council acquired an additional group company, Thomas Bow City Asphalt, in December 2019, and is considering setting up more.

Some of these companies are successful and appear well run, but this does not remove the need to the Council to have effective governance arrangements in place for them or to ensure that the lessons from RHE are applied more widely.

In July 2017, the Audit Committee recognised that improvement was needed in the Council's overall governance arrangements for its companies, and requested that officers should to identify best practice in local authority company governance with a view to proposing a framework for City Council owned companies. The scope of this work was confirmed in September 2017 and the outcome was reported in April 2018. It highlighted areas of good practice which were absent in Nottingham's arrangements. The Council recognised that it needed to strengthen the governance arrangements in place across its companies and further work was then undertaken and reported in February 2019. As a result:

- **A set of Company Governance Principles were agreed.**
- The principles set out that the companies would be provided with the necessary freedoms to achieve their commercial and operational objectives, while the Council would retain controls to enable it to protect its investment and ensure that objectives were met. It included expectations on information flow between the bodies and the need to enforce protocols so that decisions taken were for the benefit of the company and the Council group.
- **A new committee was proposed to provide member oversight**
- The Executive Board Companies and Commercial Committee was proposed. The board would have the following functions.
    - To give direction to the Shareholder Board on the vision and ambition of the Council with reference to its commercial activities
    - To review the implementation of the Council's commercial approach including its group companies in relation to development of the companies and the group
    - To evaluate the impact of group companies and commercial activities on the achievement of the Council's strategic objectives
    - To approve the Shareholder Board work programme
    - To approve group company structure proposals and other formal structures to protect the legal and commercial interests of the Council as shareholder
    - To review, by exception, outcomes achieved and delivered against the company governance principles and approve measures taken by the Shareholder Board to enable any deficiencies identified to be remedied.
- **A new officer board was also proposed**
- The Shareholder Board would include the Chief Executive, the Strategic Director of Finance, the Monitoring Officer and the Corporate Director of Commercial and Operations. The role of this board is to ensure that the Council's strategic objectives are met across the group and support the development of the group in line with the Council's regulations and ambitions.

However, progress in implementing the new arrangements has been mixed, with a significant delay in particular to the setting up of the new member forum.

The first meeting of the new officer Shareholder Board occurred in May 2019 and this has continued to meet on a monthly basis. The anticipated Companies and Commercial Committee has been replaced by a sub-Committee of Executive Board, the Companies Governance Executive Sub-Committee, which eventually had its first scene-setting meeting in January 2020 and its second meeting in May 2020 (with the delay being mainly due to Covid-19). The terms of reference of this sub-Committee, while focussing on the achievement of the Council's strategic objectives for its group, include responsibility:

- *'To approve group company structure proposals and other formal structures to protect the legal and commercial interests of the Council as shareholder….*
- *To review, by exception, outcomes achieved and delivery against the Nottingham City council company governance principles and approve measures taken to enable any deficiencies identified to be remedied.'*

While it is early days in the operation of the Sub-Committee, and we see it as a positive step, we are concerned that, like other aspects of the governance arrangements, its effectiveness may suffer as a result of playing a dual role – as an executive function driving forward policy initiatives trough the companies and as a scrutiny or monitoring function in safeguarding the Council's interests. It is vital that this latter part of the role receives due emphasis.

We understand that the original proposals for the sub-Committee envisaged the inclusion of a suitably experienced and skilled independent member but no-one was appointed. Such an appointment could have greatly strengthened to operation of the Sub-Committee by bringing in particular skills and experience.

The review of the Council's company governance arrangements proposed (in April 2019) for the first time a definition of the shareholder role:

'Their role will be to engage monthly (or more frequently as required) with the Company to ensure that it meets the Council's strategic objectives and

- receives from the group and
- provides to the group support towards development in line with the Council's policies and ambitions.'

It is noticeable that this definition does not include any element of safeguarding the Council's interests, but in other authorities with subsidiary companies this is a key element of the shareholder role. Given the example of RHE, where arrangements clearly did not ensure the Council's interests were adequately protected, the Council needs to consider whether the shareholder role should, going forward, be clearly seen to encompass first-line protection of the Council's investment in the relevant Company.

We have not assessed the governance arrangements for all of the Council's companies as part of our work, although we did assess them for a sample of organisations as part of our 2018/19 'value for money' work. For those we considered, we found that the governance arrangements were loose, with key information apparently not held by the Council and lack of evidence of effective monitoring of the companies. Recent proposals to the Executive Sub-Committee however, suggest that much more rigorous monitoring is starting to emerge, and this needs driving through.

We also noted that, of the seven group companies, only two posted an operating profit during 2018/19, and these were small, and more companies have been given significant additional loans by the Council, the ones other than RHE being:

- Nottingham City Homes £19.8m in 2018/19 – also £6.6m in 2019.20
- Enviroenergy £12m in 2018/19, nil in 2019/20
- Nottingham Ice Centre nil in 2018/19, £4.5m in 2019/20

In the light of our findings in respect of RHE, and the financial pressures which the Council is currently experiencing which mean it cannot afford any repetition of the RHE scenario, and recognising our view that some of the circumstances around RHE are unique, the Council needs to re-review its overall company governance arrangements robustly, ensure that the improved monitoring proposed to the sub-Committee is implemented and embedded and that other aspects of the arrangements are strengthened where appropriate.

R9 Within the new arrangements involving the Companies Governance Sub-committee, the Council needs to ensure that responsibilities for scrutiny and risk management are given sufficient prominence, including giving the Audit Committee explicit responsibility for scrutiny of governance and risk management across the group.

R10. In addition to those referred to in recommendations above, the Council should formally establish the lessons from its involvement with RHE and ensure these are addressed in a further review of its company governance arrangements, in particular to ensure that risks are appropriately flagged and managed, as well as successfully implementing the more robust monitoring agreed by the Companies Governance Executive Sub-Committee.

R11. As part of this review, the Council should consider the appropriateness of the definition of the shareholder role adopted in the 2019 report and give it an emphasis on protection of the Council's financial interests alongside other elements.

Wider governance issues

The Council's overall governance arrangements have not been within the scope of our work. Based on the situation we have described in relation to RHE, however, we would suggest that the Council needs to reflect on its overall governance arrangements, which are based on the 'strong leader and cabinet' model set out in the Local Government Act 2000, as amended, and associated guidance. The period during which RHE has existed has been characterised by very strong (in its general sense) and ambitious leadership within the Council, and this has enabled many successful policy initiatives to be driven through. However, in such a leadership model, it is vital that there are also sufficient checks and balances 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 has not been the case in relation to RHE. We suggest therefore that the Council uses this opportunity to consider whether its overall governance arrangements continue to serve it well.

R12: The Council should use the experience of owning RHE to consider whether there are any lessons for its wider governance, particularly in relation to the 'checks and balances' which need to be in place, including the need for a stronger monitoring and scrutiny function and moving to a culture where challenge of policy priorities and how they are being implemented is seen as a positive.

Impact on the Council's financial position

RHE has impacted on the Council's financial position in two ways:

- Through lending large and increasing amounts of cash to RHE, the Council has had less cash available to it for other purposes, or alternatively has had to borrow more – although this has had only limited impact as the Council has ready access to additional PWLB borrowing where prudent
- Much more significantly, the impairments which the Council has now had to make to the values in its balance sheet relating to its equity investment, loans and other interests in RHE mean that it has significantly depleted its useable reserves, which means that those reserves are no longer available to be used to support Council services. The need to make significant savings in the running of services, either through service cuts or increased efficiencies, has thus been significantly increased directly as a result of the financial performance of RHE.

Accounting standards, which the Council is legally obliged to follow, require that the Council values assets such as loans made and equity investments taking into account not the original costs of the assets but the likelihood of them being repaid. Following the finalisation of the audit of RHE's 2018/19 accounts, which disclosed a loss of £23.1m for the year, almost 25% of turnover, and taking into account RHE's updated forecasts for 2019/20, the Council has reassessed the likelihood of repayment in accordance with appropriate accounting guidance and as a result its own revised accounts now include impairments of £10.5m on the £20.2m of loans and £7.5m on the £7.5m equity. This has effectively reduced the Council's reserves by £18m. At the same time, the Council has increased the liability value in respect of the Parent Company Guarantees which it has provided in respect of RHE, because there is an increasing likelihood of these being 'called in' by suppliers, and this has reduced the Council's reserves by a further £6.4m.

A further impairment of £7.9m has been required in 2019/20 to reflect the continuing deterioration in RHE's finances. It is also likely that there will be a further cost in 2020/21 once the future direction of the Company has been determined.

This has occurred at a time when the Council's finances are already under pressure as a result of the additional costs and lost income due to Covid-19. The Council has some hard choices to make and cannot afford to become involved in further risky initiatives without very robust risk management arrangements in place.

R13. The Council should ensure that it reflects the financial pressures arising from RHE alongside those from covid-19, demand-led services and other areas to produce balanced and achievable financial plans for the current year and for the medium-term, without disproportionate, unsustainable reliance on one-off measures.

Annex - Previous audit action

We were appointed as the Council's auditors with effect from April 2018. Towards the end of 2018 and throughout 2019, we had a range of concerns about the arrangements the Council had put in place in relation to its interests in RHE and, specifically, in the arrangements for managing the significant financial risks which the Council was taking though that involvement. As noted above, our audit of the Council's 2018/19 accounts was significantly delayed because RHE's own auditors, BDO, were unable to give their opinion on the Company's accounts, which are consolidated into the Council's accounts and therefore impact on our audit responsibilities.

We expressed our concerns in the latter half of 2019 to senior officers and to the Council's Audit Committee, but these discussions were not in public because we were concerned that any public discussion of our views on the levels of risk that the Council was taking, linked to the Company's financial position, could in itself lead to a rapid deterioration of the Company's position (eg through trade credit facilities being withdrawn, loss of customers and even possible regulator action), which could have led to an uncontrolled collapse of the company and rapid crystallisation of the Council's financial risks.

Following the provision of the urgent additional financing to RHE in October to enable it to make its Renewable Energy Commitments payment to Ofgem, we decided that it was appropriate for us to make formal recommendations to the Council to draw attention to the level of risk faced and encourage it to take further action to manage those risks. Ordinarily, we would have made Statutory Recommendations under Section 24 (check) and Schedule 7 of the Local Audit and Accountability Act 2014, which have to be considered by the Council in a public meeting and to which a public response is required from the Council. We determined, however, that it was not in the public interest at that time for such consideration to be made public, and we therefore agreed with the Council that it would treat our recommendations as if they were Statutory Recommendations with the exception of meeting the publicity requirements.

In a letter to the Leader of the Council dated 2 December 2019, we stated that:

As your external auditors, we have become increasingly concerned about the overall increase in the level of risk to which the Council is exposed and the rationality, and therefore lawfulness, of decisions to provide additional financial support. These decisions have had to be made in short timescales and in the absence of a sound understanding of the Company's financial performance and forecasts. This has meant that the only justification for providing the additional support has been in order to prevent an uncontrolled failure of the Company and hence to protect the Council's existing loans and guarantees. If the Council is to provide any further support to the Company, it needs to do so not just to protect the existing investment but also in the light of a rounded assessment of the Council's policy objectives for the Company, the prospects for the Company and the level of risk which the Council believes is appropriate to take in the light of the policy objectives. Continuing with the sole aim of protecting the Council's existing loans and guarantees is not a rational position other than in the very short term.

And made the following recommendation:

The Council should, taking account of all relevant information including the analysis provided by PwC, determine a clear direction for its future relationship with Robin Hood Energy, including:

- *reconsidering or reaffirming the Council's policy objectives in relation to its interests in RHE*
- *ensuring that the level of financial risk the Council is carrying is consistent with the policy objectives and with the Council's fiduciary duty to local taxpayers*
- *implementing, in the light of these decisions on policy and risk, measures to reduce the level of risk to the Council, which could range from retaining the current level of financial involvement with the company but with much stronger monitoring and governance arrangements through to full disposal of the Council's interests or a controlled winding up of the Company.*

The Council considered the recommendation at the private meeting of Executive Board on 17 December 2019. We were not provided with a formal written response to the recommendations, but the minutes of the meeting record that it was resolved to:

(1) Note the recommendations made by the NCC external auditor.

(2) Note the position of RHE's external auditor

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(7) To approve the necessary actions to respond to NCC's External Auditor recommendation;

(8) To approve a full options appraisal regarding the future structure of the Company;

Appendix 1

Action Plan in response to the Report in the Public Interest

- **All recommendations are accepted**
- **Recommendations R1 – R13 are recommendations from *The Report in the Public Interest***
- **Recommendations NCC1 - NCC 3 are additional recommendations**

The overall accountability for the action plan rests with the Leader of the Council and the Chief Executive designate		
Recommendation 1 Using the current Strategic Review and other appropriate advice to assist with decision-making, the Council should urgently determine the future of Robin Hood Energy, with options properly evaluated and risks properly assessed. This assessment should also take into account the context of the Council's current financial position.		
Portfolio Holder accountability: Councillor David Mellen – Leader		
Action	**Deadline**	**Accountability**
• At the June 2020 Executive Board Nottingham City Council agreed its full support for the strategic review launched by the Robin Hood Energy Board.	31/10/20	Corporate Director Development & Growth
• The Strategic Review will report to the Robin Hood Energy Board and will be concluded shortly.	05/10/20	Corporate Director Development & Growth
• Any consequences of the review for the Council's 2020/21 budget and its medium term financial outlook and plan will be reported to full Council as part of the October 5th interim budget report.	05/10/20	Strategic Director Finance

Recommendation 2 The Council should review its overall approach to using Councillors on the boards of its subsidiary companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company Board members.		
Portfolio Holder accountability- Councillor Sally Longford – Energy, Environment & Democratic Services		
Action	**Deadline**	**Accountability**
• An audit and review of NCC's approach to councillor membership of each subsidiary company board and any other similar organisations NCC Councillors are appointed to, will be undertaken. This review will fully involve the chief executives/chief officers of the Council's companies, as well as the Chairs and members of the Company Boards and other subsidiary organisations.	31/10/20	Director of Legal & Governance
• As part of this review, the membership balance of the boards will be considered in aggregate in regard to best practice for achieving diversity, skill set, sectoral knowledge and NCC representation.	31/10/20	Director of Legal & Governance
• External guidance on best practice in regard to Councillor appointments on local authority companies will be sought	30/09/20	Director of Legal & Governance
• External guidance on defining the role and legal requirements for local authority company directors and guidance on skill set required will be sought.	30/09/20	Director of Legal & Governance

Recommendation 3 Where it continues to use Councillors in such roles, it should ensure that the non-executives (including Councillors) on the relevant board have, in aggregate, the required knowledge and experience to challenge management. This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of Councillors.		
Portfolio Holder accountability- Councillor Sally Longford – Energy, Environment & Democratic Services		
Action	**Deadline**	**Accountability**
• The review of NCC councillor directors of boards in R2 will also establish the sectoral knowledge required to effectively hold the management of the different companies to account and assess the knowledge and skill set of the existing membership of the boards in relation to that sector or business area. This review will fully involve the chief executives or chief officers of the Council's companies, as well as the Chairs and members of Company Boards.	31/10/20	Director of Legal & Governance
• Proposals for remedying any identified gaps in knowledge and/or experience will be brought forward which will include a consideration of training and if necessary using interim additional expertise to ensure effective governance.	30/11/20	Director of Legal & Governance
• Training will be devised to enable members to understand and practice effective director / board member interventions so as to appropriately challenge the management of the Council's companies and improve the robustness of Company accountability to the Council.	30/01/21	Director of Legal & Governance
• Specialised mandatory training packages will be devised to ensure councilors appointed as chairs of council company boards are able to understand and effectively fulfil their roles	30/01/21	Director of Legal & Governance
• Essential training will be mandatory and retention of the director role for each councillor will rely on completion of the training on this recommendation.		
• The relevant NCC officials will continue to be available to offer advice to members on all aspects of their role on Council company boards.	With immediate effect	Director of Legal & Governance
• Advice will also be sought on the best way to assess the competence of Councillors	30/01/21	Director of Legal & Governance

fulfilling their roles as directors as part of effective company governance. The group whip for each political party or recognised group will have a role in this assessment process. • The Council's constitution will be reviewed to appropriately reflect this requirement and it will be proposed at the 2021 Annual General meeting.	May 2021	Director of Legal & Governance

Recommendation 4 Where Councillors are used in such roles, the Council should ensure that the Councillors are provided with sufficient and appropriate training, which is updated periodically.		
Portfolio Holder accountability: Councillor Sally Longford – Energy, Environment & Democratic Services		
Action	**Deadline**	**Accountability**
• A review of the current training package offered to Councillors as directors on company boards and other similar organisations will be undertaken.	30/10/20	Director of Legal & Governance
• External best practice and advice will be sought from both the Local Government Association and bodies in the private sector who advise on company governance and training for directors.	30/10/20	Director of Legal & Governance
• This review will fully involve the chief executives/chief officers of the Council's companies, as well as the Chairs and governance of Council company Boards.	30/01/21	Director of Legal & Governance
• New training packages will be devised and delivered on a mandatory basis for: > Initial training > Refresher training > Specialist training where required to understand a particular subject/field. • External sources will provide the specialist training and this training will be reviewed every two years to ensure it remains relevant and effective. • Funding for the new training courses will need to be identified • Only Councillors who have completed the requisite training will be able to remain as Council appointed directors.		
• The Council's constitution will be reviewed to appropriately reflect this requirement and it will be proposed at the 2021 Annual General meeting.	May 2021	Director of Legal & Governance

Recommendation 5
The Council should ensure that all elements of its governance structure, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals.

Portfolio Holder accountability: Councillor David Mellen – Leader

Action	Deadline	Accountability
• The Council's Constitution and Scheme of Delegation will be reviewed to identify the roles that perform a specific function in ensuring effective governance of the Council's delivery of its duties and its powers and its expenditure.	30/11/20	Director of Legal & Governance
• As part of that review, the specific corporate role, definition and resources for the shareholder representative function will be examined.	30/11/20	Director of Legal & Governance
• External advice and best practice will be sought to define officer roles / functions that communicate and safeguard the interest of the Council in relation to the effective corporate governance of individual council companies.	30/01/21	Director of HR and Customer
• This review will fully involve the chief executives/chief officers of the Council's companies, as well as the Chairs and governance of Council company Boards.		
• Once the role and resources have been determined, costings to implement the new function and an appropriate role description (s) will be produced and submitted for decision.	31/10/20	Director of HR and Customer
• Whilst this review is underway the current shareholder representatives will be reviewed, any existing gaps filled and interim new role definitions will be drawn up as well as appropriate training provided.	30/11/20	Director of Legal & Governance
• In addition to individual roles being identified and re-defined from the review of the constitution, there are also Council bodies that perform a vital function for the Council's effective governance. The role of the Executive Board, Companies Governance Executive Sub-Committee, Overview and Scrutiny Committee and the Audit Committee's terms of reference will also be reviewed to ensure clarity on role and	20/12/20	Director of Legal & Governance

accountability for Council companies' governance across the Council. The Chairs of Overview and Scrutiny and the Audit Committee will be fully involved in this review. • Training will be offered to all members and chief officers on the roles of these bodies.	30/01/21	Director of Legal & Governance

Recommendation 6

When allocating roles on Council-owned organisations to individual Councillors, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them.

Portfolio Holder accountability: Councillor Sally Longford – Energy, Environment & Democratic Services

Action	Deadline	Accountability
• The Council's constitution and the appointments process of Councillors onto Council company boards will be reviewed. A councillor may not be appointed as chair of a council company board whose main activity lies within any executive portfolio they hold.	30/11/20	Director of Legal & Governance
• The length of appointment tenure beyond a 12-month appointment period will be reviewed to enable consistency of membership of the board and to develop knowledge and experience	30/11/20	Director of Legal & Governance
• An amendment to the Constitution will be developed for formal consideration, so if a Councillor is appointed chair or vice-chair of a company board, they are unable to also be the chair or vice-chair of the Audit Committee, or Overview and Scrutiny Committee thus avoiding any conflict of interest in these essential roles.	31/03/21	Director of Legal & Governance
• In addition, the Council will take steps to minimise any other possible conflicts of interest for directors on Council company boards by ensuring the improved training offer to be developed for members includes how to recognize and avoid any conflicts of interest for chairs and Councillor directors.	30/01/21	Director of Legal & Governance
• The access to formal advice from the Council's legal and democratic service for all councilors appointed to council company boards on conflicts of interest or any other matter will continue to be made available.	With immediate effect	Director of Legal & Governance

Recommendation 7 The Council should ensure that risks relating to its companies are considered for inclusion in its overall risk management processes, with appropriate escalation and reporting, rather than being seen in isolation.		
Portfolio Holder accountability: Councillor Sam Webster Finance, Growth & the City Centre		
Action	**Deadline**	**Accountability**
• The Council's high level risk register was created in May 2020 and was reviewed by the July 2020 Audit Committee. A number of Council company risks were included in that new risk register. This will continue to be developed and refined.	30/11/20	Strategic Director of Finance
• The Council's risk management framework has been reviewed to ensure the full incorporation of council company risks across all risk registers within departments and also in the new financial risk register. Council companies' risks will be separately considered and reported in such a way that explicitly draws out the risks to the Council that may arise from the financial (and other) performance of the various companies. This review will fully involve the chief executives/ chief officers of the Council's companies, as well as the Chairs and members of the Company Boards.	30/11/20	Strategic Director of Finance
• The reporting of risks to Council company boards will also be implemented as part of this action.	30/11/20	Strategic Director of Finance
• The regularity of the reporting of the high level risk register to the Audit Committee and the Executive Board and Overview & Scrutiny Committee will be reviewed as part of this action. The Chairs and members of these bodies will be fully involved in this action.	30/11/20	Strategic Director of Finance
• The reporting of companies' related risks will form part of the suite of reporting information presented to the Companies Governance Executive Sub-committee		

Recommendation 8 As the new arrangements for monitoring companies are rolled out alongside the Companies Governance Executive Sub-Committee (CGESC), the Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Sub-Committee and others involved in holding the companies to account, and that robust action, with the oversight of the s151 officer, is taken if suitable information is not provided.		
Portfolio Holder accountability: Councillor Sam Webster Finance, Growth & the City Centre		
Action	**Deadline**	**Accountability**
• The Companies Governance Executive Sub-Committee (CGESC) has been meeting since 2019 and has established reporting requirements for all Council companies. • A dedicated senior finance post provides additional capacity and capability to managing the financial reporting requirements on the Council's group of companies.	30/11/20	Director of Legal & Governance
• The current role and remit of the CGESC will be reviewed as to how it can deliver the most effective governance in the light of The Report in the Public Interest.	30/11/20	Director of Legal & Governance
• Officer support is to be provided to offer full advice and analysis for members on CGECS, Audit Committee and Overview & Scrutiny Committee in relation to risks; annual reviews of & updates on business cases and plans; scheme of delegation; financial matters and overall delivery.	30/11/20	Strategic Director of Finance
• The dedicated senior finance role will also be continually reviewed in the light of The Report in the Public Interest to ensure it is fulfilling the corporate function needed and that departments and Council companies understand their relationship and new ways of working on this matter.	With immediate effect	Strategic Director of Finance
• The s151 Officer will make recommendations to CGESC regarding action to be taken in the event that Companies do not comply with the required reporting requirements.	30/11/20	Strategic Director of Finance
• Council company financial information reporting will be reviewed to see how more explicitly it can be referenced in the regular Council budget monitoring reports provided to the Executive Board on a quarterly basis • This review will need to consider how to balance the transparency in the Council's	30/11/20	Strategic Director of Finance

budget reporting with the need to retain commercially sensitive information in the private part of any public meeting.		

Recommendation 9 Within the new arrangements involving the Companies Governance Executive Sub-committee, the Council needs to ensure that responsibilities for scrutiny and risk management are given sufficient prominence, including giving the Audit Committee explicit responsibility for scrutiny of governance and risk management across the group.		
Portfolio Holder accountability- Councillor Sally Longford – Energy, Environment & Democratic Services		
Action	**Deadline**	**Accountability**
• The Council will review the terms of reference for Companies Governance Executive Sub Committee (CGESC), Overview and Scrutiny Committee and the Audit Committee to ensure that roles and responsibilities are explicitly clear. The Chairs of all these bodies will be fully involved in this action.	30/11/20	Director of Legal & Governance
• External advice will be sought on best practice in defining the roles between these bodies and on effective training for members to understand and work in these new defined roles and to achieve the prominence in practice.	30/11/20	Director of Legal & Governance
• The training packages that will be offered will carry the same mandatory requirements for membership off these bodies to continue.		
• Specific training modules will be drawn up to explicitly support the chairs of these bodies in carrying out their new roles.	30/01/21	Director of Legal & Governance

Recommendation 10 In addition to those referred to in recommendations above, the Council should apply the lessons from Robin Hood Energy in a further review of its company governance arrangements, in particular to ensure that risks are appropriately flagged and managed, as well as successfully implementing the more robust monitoring agreed by the Companies Governance Executive Sub-Committee.		
Portfolio Holder accountability: Councillor David Mellen – Leader		
Action	**Deadline**	**Accountability**
• The Council will draw together all the varying reviews and activity as outlined above into an overall picture of its governance arrangements and from that produce a unified report on the lessons to be learnt from Robin Hood Energy Ltd. • This learning lessons report will draw upon the effective practice of some of the other Council company boards to share those positive lessons across the group of council companies as well. • External support and advice will be sought on how best to draw together all the learning from the reviews. • This review will fully involve the chief executives/chief officers of the Council's companies, as well as the Chairs and members of the Company Boards.	20/12/20	Director of Legal & Governance

Recommendation 11
As part of this review, the Council should consider the appropriateness of the definition of the shareholder role adopted in the 2019 report and give it an emphasis on protection of the Council's financial interests alongside other elements.

Portfolio Holder accountability: Councillor David Mellen – Leader

Action – N.B. the actions below must be read alongside the actions for Recommendation 5	**Deadline**	**Accountability**
• The Council's Constitution and Scheme of Delegation will be reviewed to identify the roles that perform a specific function in ensuring effective governance of the Council's delivery of its duties and its powers and its expenditure.	30/11/20	Director of Legal & Governance
• As part of that review, the specific corporate role and resources for the shareholder representative duty will be examined and in particular how it safeguards the Council's financial interests.	30/11/20	Director of Legal & Governance
• External advice and best practice will be sought to define officer roles / functions that communicate and safeguard the interest of the Council in relation to the effective corporate governance of individual council companies.	30/01/21	Director of HR and Customer
• Once the role and resources for this function have been determined, costings to implement the new function and an appropriate role description will be produced and submitted for decision.	30/11/20	Director of Legal & Governance
• Whilst this review is underway the current shareholder representatives will be reviewed, any existing gaps filled and an interim new role definition be drawn up and training provided.	31/10/20	Director of HR and Customer

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Recommendation 12 The Council should use the experience of owning RHE to consider whether there are any lessons for its wider governance, particularly in relation to the 'checks and balances' which need to be in place, including the need for a stronger monitoring and scrutiny function and moving to a culture in which challenge of political priorities and how they are being implemented is seen as a positive.		
Portfolio Holder accountability: Councillor Sally Longford – Energy, Environment & Democratic Services		
Action	**Deadlines**	**Accountability**
• An overarching review of the Council's wider governance arrangements will be commissioned following advice from the LGA and other relevant external bodies. • External advice and best practice models will be considered alongside an in-depth assessment of council practice to date	31/03/21	Director of Legal & Governance

Recommendation 13 The Council should ensure that it reflects the financial pressures arising from RHE alongside those from covid-19, demand-led services and other areas to produce balanced and achievable financial plans for the current year and for the medium-term, without disproportionate, unsustainable reliance on one-off measures.		
Portfolio Holder accountability: Councillor Sam Webster Finance, Growth & the City Centre		
Action	**Deadlines**	**Accountability**
• The construction of a refreshed Medium Term Financial Strategy (MTFS) is underway and due to be reported to Full Council in October 2020. • This will set out at a high level how the Council will balance its budget over the medium term and incorporates the financial implications for Council own companies for the overall Council budget.	05/10/20	Strategic Director of Finance
• More detailed plans will be brought to Full Council in December 2020.	December 2020	Strategic Director of Finance

To further support the work necessary to fully respond to the findings in *The Report in the Public Interest,* there are some further actions for full Council to consider.

NCC 1. Review of Council's approach to the ownership of companies.
The Council has a range of companies totally in its ownership and some owned jointly with others. These companies have developed over time and further are planned to be created during this period of office as outlined in the Council Plan. In the light of the findings of this report the overall approach of the Council to its relationship with its companies could benefit from a review.

Portfolio Holder accountability: Councillor David Mellen – Leader

Action	Deadlines	Accountability
• Establish the basis of ownership of the Council's companies and the differing frameworks and legislative basis upon which they were created.	31/03/21	Director of Legal and Governance
• Seek out external advice on the best practice model of council ownership of local authority controlled companies and managing the risks and benefits they present.		
• Following that advice and review, construct a council framework of NCC's company ownership with particular regard to risk management and accountability to the Council.	June 2021	Director of Legal and Governance
• Review all existing companies against that framework and where there is divergence establish whether a business need exists to maintain the difference or agree changes to comply with the framework.	June 2021	Director of Legal and Governance
• Any proposed additional council companies should be established using this new framework.	With immediate effect	

NCC 2. Review of effective governance practice in NCC companies The Council has a number of companies which have had effective governance over a number of years and which have involved elected members on the boards. As part of this improvement work it is important to understand what has made those council companies and Boards effective and how any learning can be applied to other council companies and the other recommendations in this Action Plan.		
Portfolio Holder accountability: Councillor Sally Longford – Energy, Environment & Democratic Services		
Action	**Deadlines**	**Accountability**
• Seek out external guidance on independently assessing effective company governance and use this to assess the governance practice of all Council owned companies.	31/03/21	Director of Legal and Governance
• Following that assessment, draw out any lessons or good practice that can be shared across all council companies.	June 2021	Director of Legal and Governance
• Work with the chairs and chief executives / chief officers of Council companies to understand any self-assessment models they may use.	June 2021	Director of Legal and Governance
• Companies Governance Executive Sub Committee, Executive Board and the Audit Committee to consider the findings of this review and its recommendations.	June 2021	Director of Legal and Governance

NCC 3. Review of membership of the Audit Committee As a solution to the pressures from the reduction in public funding of services, the Council either owns or has a major interest in a considerable number of companies. It has also pursued a policy of in-house commercialisation of some services. As such the company and commercial trading risks it carries are more that would normally be expected for a local authority. As such, the role that the Audit Committee plays in giving assurance to the Council on these commercial risks and trading outcomes is vital. In the light of the findings of the Report in the Public Interest, it is proposed that a review of the membership of the Audit Committee is undertaken to consider whether it is necessary to bring in additional expertise in a relevant capacity to further support the Committee.		
Portfolio Holder accountability: Councillor David Mellen – Leader		
Action	**Deadlines**	**Accountability**
• Review of the current membership of the Audit Committee. • Seek out external advice of best practice models of Audit Committees in local government that could bring additional support to how the council is dealing with the risks it is facing	30/01/21	Strategic Director of Finance

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LOCAL
PARTNERSHIPS

LOCAL AUTHORITY COMPANY REVIEW GUIDANCE

A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities

1 FOREWORD

Max Caller
Strategic Adviser
and Lead Inspector
for HM Government

Why is this guidance needed?

Being a director of a local authority controlled company requires officers and elected members appointed to those roles to operate in a completely different legal and philosophical framework to that they are used to inside their local authority.

It can lead to real conflicts between the duty owed to the company and the interests of your council. It can also lead to conflicts of interest on a personal level which makes holding some roles in a local authority unviable whilst continuing as a director. It is necessary to make different assumptions about how things operate and what issues you need to have demonstrated you took into account, and what had no influence.

When I first took over as the chair of a company, jointly owned by two London boroughs, I was surprised by the amount of time we spent considering cash flow, with profitability being a second order issue. I had never had such a conversation inside my authority because cash flow is never an issue.

Too often, this is not understood until problems arise, resulting in reputational and financial damage and in some cases, external intervention directly impacting on your authority.

In some of the examples I have seen, it is not very clear why a company structure was chosen for the activity in the first instance as the council involved was not prepared to allow its company to exercise any of the freedoms that the structure would allow. In other examples, there were no controls at all.

In the right circumstances, using a company structure can facilitate change or outcomes that would be very difficult to deliver in a timely way under the constraints of a council's constitution, but it needs to be clear why that is.

In the report of the rapid review of Nottingham City Council, which I led in 2020, it was recommended that guidance was commissioned to aid local authorities in this area. Following the approach set out in this guidance and toolkit will help us all avoid the obvious traps.

In this guidance document

CONTENTS

2 INTRODUCTION

2.1 Background

Many councils have established wholly or partly-owned companies, covering a diverse range of offerings. These include selling services to other public bodies, providing leisure or cultural facilities or establishing vehicles to manage or invest in revenue generating assets such as affordable housing or commercial property.

Some of these companies have been successful, generating a healthy return on investment and delivering recognised benefits and positive outcomes. Others have generated negative headlines for the wrong reasons.

Whether successful or not, many councils have seen the need to review their companies. In some cases, councils seek assurance that the governance structures and processes for managing risk are sufficiently robust. Other local authorities want assurance that the entities are meeting councils' expectations, delivering real benefits, and providing value for money.

This desire to review entities has recently escalated in part due to the COVID-19 pandemic which has revealed areas where councils are exposed to significant risk.

We have also witnessed several well-publicised issues with company governance at a number of councils, with the Government making direct interventions, rapid reviews and best value inspections, some of which are highlighted as case studies in Section 7.

...a tool to help councils ensure that they strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.

2.2 Purpose

As this guidance is primarily aimed at reviews of *existing* council owned companies, the first sections focus on the effectiveness and appropriateness of governance arrangements that are critical so that the companies may be held to account and to protect the interests of taxpayers.

Sections 3 and 4 of this guidance provide a best practice checklist of issues to consider while conducting governance reviews. Section 3 focuses on councils' governance arrangements for overseeing wholly or partly owned entities and holding them to account.

Section 4 focuses on the establishment of effective governance arrangements for the entities themselves.

Section 5 has been included for context, and sets out the questions and challenges that we believe are relevant to the decision-making processes for establishing wholly or partly owned entities; why is establishing a company the right approach and would an alternative delivery model be more appropriate? It provides guidance as well as questions and issues to address as part of the process to plan and approve the establishment of a commercial entity.

This guidance can be used as a tool to help councils ensure that they strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.

A summary of evidence and an accompanying action sheet is provided in Section 8.

3
COUNCIL GOVERNANCE ARRANGEMENTS

3.1 Introduction

This section provides a best practice checklist of issues to be considered when reviewing of wholly or partly owned entities, focusing on councils' governance arrangements for overseeing the entities and holding them to account.

3.2 Governance aims

Good corporate governance requires councils to carry out their functions in a way that demonstrates accountability, transparency, effectiveness, value, integrity, and inclusivity.

The Governance arrangements for council owned entities should seek to ensure that:

- the entity should have sufficient freedoms to achieve its objectives
- the council should have sufficient control to ensure that its investment is protected, appropriate returns on investment can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the council
- the entity continues to be relevant and required (in its existing form) and if not, appropriate steps are taken (for example, amending constitutional documents or changing form or terminating the vehicle)

Any so-called "Teckal"[1] companies should remain compliant with relevant exemption requirements under EU procurement law.

[1] The case of *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia (Case C-107/98) [1999] ECR I-8121]* established how a contracting authority could procure direct from an external company in which it has control similar to that it exerts over its own departments. Subject to meeting certain criteria (Reg12 of the Public Contracts Regulations 2015), procurement would be outside rules regulating public contracts.

The 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**" and provides an important message that all councils establishing commercial entities should be cognisant of the risk of what is referred to as "**institutional blindness**" whereby effective governance arrangements are overshadowed by a council's determination that the company should be a success.

Generally, although not in all cases, it would be expected that an entity which is a trading company will have more autonomy than a Teckal company. Also, the amount of autonomy will depend on the size and scale of the business, the board make up, the size of any debt owed to the council or wider dependency on public sector loans or grants.

EVIDENCE

C1 There should be evidence that the council and senior management recognise the importance of establishing appropriate and proportionate governance arrangements for the oversight of entities

C2 There should be evidence of a culture of challenge and clarity relating to the purpose, efficiency, effectiveness, specific objectives, and freedoms of the entity

3.3 The council's shareholder role

The council must have a designated "shareholder" to represent its ownership of the entity. The process for appointing a shareholder needs to be set out in the council's constitution which should also detail how the shareholder reports on the exercise of delegated powers.

The shareholder may also have responsibility for liaison between the council and the entity and for access to information, although this role may also be vested in a distinct "contract officer" role.

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.

Councils may decide to delegate the shareholder function to a shareholder committee or board of the council or to the executive rather than to a designated individual.

The role of the shareholder should be to provide:

- oversight of any decisions that can only be made by the shareholder, rather than left to the entity (known as "reserved matters"). These may cover areas such as approval of annual business plan, key appointments, setting up subsidiaries, borrowing money, giving guarantees or winding up
- a mechanism to review the implementation and development of the council's commercial approach through the entities it influences and owns
- the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the council has established are being adhered to
- an articulation of what success looks like in terms of achieving social outcomes and/or a return on investment
- effective and systematic engagement between the Chair/CEO and shareholder role to assure effective performance against strategy and governance
- a mechanism to communicate the shareholder's views to the entity
- a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives and the business plan
- a regular review of whether the entity 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
- a holistic review of risk to the council offered by all active entities

Shareholders or their designated representatives may attend company board meetings as observers, but they should not be there as board members.

An up-to-date shareholder's agreement should describe the powers of the board of the entity and how and when the shareholder might influence those powers. This can help demonstrate the required level of council control over any Teckal companies. For trading and investment companies, it can lay out how the entity is independent from the council to ensure it is not treated as a public sector entity.

If the council is the sole shareholder, a formal shareholder's agreement may not necessarily be required. However, it is good practice to document such an agreement to ensure that there is no doubt about the powers of a company board to take decisions without the approval of the shareholder. It is also important to prevent unwarranted interference by council officers or members in the entity's affairs.

EVIDENCE

C3 There should be a clearly designated council shareholder role or function which is both understood and recognised by the council and the entity (and documented in terms of reference)

C4 There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting any changes made as the entity has developed, in a shareholder's agreement, or as set out in the company's governing articles of association

C5 There should be evidence that the individual undertaking the shareholder role is provided with suitable training and support commensurate with the role

C6 There should be evidence of formal periodic shareholder/ Chair/CEO meetings with effective supporting papers to inform subsequent company board meetings

3.4 Council oversight, scrutiny, and governance framework

The council should have a clear, systematic framework which underpins arrangements for overseeing, interfacing, and engaging with entities to ensure its interests are safeguarded.

The framework should be underpinned by clear governance principles, such as keeping the role of shareholder separate from that of the board and applying arrangements in a similar legal model, by using standard articles of association or shareholder's agreements so that the overall approach is standardised.

The council should regularly undertake an objective assessment of how successfully each entity supports its policies and strategies.

The council should regularly review risks relating to its entities and establish whether they are effectively managed and scrutinised. Different types of entities will be exposed to different risks. For example, development/asset-based companies will be constrained by any changes to council borrowing powers, whereas service-based companies will potentially be impacted by Teckal constraints around growth.

The council's approach to governance should be determined by whether it wholly or partly owns several distinct entities or whether it funnels its interests through a holding company. A group structure may provide a single point of focus for managing the council's commercial activity and an effective use of resources.

For councils with a cabinet system, the council should establish a company management committee which should be a sub-committee of cabinet to look at the totality of a council's holdings and the decisions of that body should be subject to scrutiny.

The council may also want its overview and scrutiny committee (or equivalent) to provide overview, pre-decision scrutiny and call-in of decisions regarding the council's shareholding interest in its entities.

The council may wish to programme formal oversight and scrutiny reviews which focus on whether the financial and social objectives of the entity are being delivered.

One of the roles of the council's audit committee should be to pay specific attention to how the integration of the various external auditors across all its entities is achieved.

The council should ensure, for the sake of openness and transparency, that reviews of entities by committee or executive can be viewed by the public where feasible.

EVIDENCE

C7 There should be documented evidence of transparent member and officer scrutiny, oversight, and approval of business plans

C8 There should be evidence of a clear set of KPIs that fall out of the business planning process

C9 There should be evidence that senior company staff are performance managed against KPIs

C10 There should be evidence of ongoing assessment of value-for-money and quality offered by the entity through an adequately resourced monitoring function

C11 There should be ongoing assessment of risks relating to the entity, supported by processes to ensure that risks are managed as part of the council's overall risk management approach, with appropriate escalation and reporting

C12 There should be evidence of a consistent approach across the council when it comes to engaging with its entities

C13 The council should have clear and unfettered access to audited accounts for its entities

3.5 Business case for the entity

The council should have a clear understanding of what it wanted to achieve by establishing an entity and be able to articulate clearly what success looks like in terms of achieving social outcomes and/or a return on investment.

Form should follow function; the model adopted should derive from its intended purpose, not the other way round.

The decision-making process should have been informed by the development of a detailed business case, ideally using the HM Treasury five-case model, based on the Government's green book[2].

The business case should have been produced prior to the establishment of the entity and have set out the rationale, enabling stakeholders to review and challenge the establishment of the entity.

[2] The Green Book is issued by HM Treasury on how to appraise policies, programmes and projects. It also provides guidance on the design and use of monitoring and evaluation before, during and after implementation.

The business case should cover:

- a clear strategic case which identifies direct and indirect benefits
- a rigorous appraisal of the options available for delivering the service or desired outcomes
- the objectives of the entity
- the expected financial results of the company, together with any other relevant outcomes that the business is expected to achieve
- the investment and resources required to deliver the objectives of the entity
- any risks involved
- other important legal, commercial and financial considerations for setting up a company including company law issues; the cost of bidding for contracts; tax liability (corporation tax and VAT); procurement law and state aid/subsidy rules and employment law (TUPE and pensions)

Market conditions and changes will affect commercial activity and therefore assumptions underpinning the activities of an entity may need to be revised over time.

Once set up, councils should continually re-assess the business case and challenge the ongoing existence and relevance of their entities and review the extent to which their objectives remain relevant over their lifetimes.

EVIDENCE

C14 It should be possible to review the business case which assessed the risk involved in establishing the entity and recommended its establishment, taking account of other potential delivery models

C15 Objectives of the entity should be clearly defined and documented, and regularly reviewed to ensure that its operation continues to support council policy and strategy, including periodically reviewing the business case to ensure it is still valid

3.6 Agreements with the entity

The council should have commercial agreements which set out any assistance provided to the entity and the terms for that assistance, such as a loan or a parent guarantee.

The terms of any support provided to the entity in the form of goods, services or staff should be captured in appropriate legal agreements.

Where there is a service contract between a council and an entity, contract management arrangements should be established and may include a joint liaison committee to review issues (relating to performance, disputes, or changes in the relationship, for example).

Additional agreements should be established as required, including data protection and information sharing protocols.

EVIDENCE

C16 Agreements should be documented between the council and the entity for any support or services provided by either party to the other party

C17 All agreements should be clear, up-to-date, and regularly monitored and reviewed, with any changes to agreements documented so that a clear audit trail exists

3.7 Avoiding and managing conflicts of interest

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.

Council officers and members also have fiduciary duties to the council. Situations can inevitably arise where the same person will be a decision maker or advisor both for the council and one of its entities. Examples of this include matters of reporting, contractual discussions, investment requests or resourcing agreements.

When acting as director of the entity, a council officer or member is obliged to act in the best interests of the entity. As the Institute of Directors' Corporate Governance Guidance and Principles states "**an important principle of company law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/or stakeholders**".

If there is a risk of a conflict of interest, the officer or member should not act for both the council and the entity unless they agree that they are both seeking the same common objective.

Conflicts of interest can arise in a wide variety of ways. The council should use its internal and external audit functions to regularly review the governance arrangements relating all of its entities to ensure that potential conflicts do not arise.

Examples of areas where conflicts can arise include:

- individuals acting as representative for both the entity and the council. For example, given that it is likely that certain decisions of the shareholder will require ratification by the Section 151 officer, it is not considered good practice for a Section 151 officer to hold a position with a council owned entity
- holding a council role which involves potential oversight and scrutiny of the entity, while also holding a position with the entity. For example, an entity board member who also holds a position on the council's audit committee would clearly be conflicted
- holding a position as a company board member while having private financial or non-financial interests which may conflict or may be perceived to conflict with the role. For example a company board member, or member of the family, having an interest in a supplier or competitor to the company
- board members receiving benefit (such as gifts and hospitality) from third parties (such as potential suppliers to the company)
- the exploitation by a board member of any asset, information or opportunity related to the entity

Officers and members who hold roles with the entity must declare any interest they have in a proposed transaction in advance of the transaction being entered into. The declaration of an interest in an existing transaction must be declared as soon as reasonably practicable.

The council should have a formal policy to deal with conflicts.

All potential conflicts of interest should be referred to the council's Monitoring Officer for a decision about whether a conflict exists.

In the event of a conflict of interest, the Monitoring Officer should operate an "ethical wall" policy, whereby an information barrier is erected to prevent communication that could lead to the disclosure of information which is confidential to one organisation or the other.

Officers and members should report back to the council on their involvement in outside entities to which they have been nominated by the council.

This should involve making themselves available for council scrutiny committees and other council governance forums which oversee the entity (although they should not be obliged to disclose commercially confidential information about the entity).

EVIDENCE

C18 There should be evidence that a culture exists whereby actual or potential conflicts of interests are identified, declared, and acted upon, including evidence of appropriate training across the organisation

C19 The council should have clear and up-to-date policies and processes to consistently manage actual conflicts or potential conflicts of interest, including a clear process for investigations and procedures for appropriate disciplinary actions in the event of breaches

C20 The roles, responsibilities and reporting lines of officers and members who are involved in council oversight of the entities, the provision of services between the entities or the running of the entities should be clearly defined and documented

3.8 Council appointments to the board

The council should carefully consider nominations to the board, taking account of:

- the benefits of appointing independent directors to the entity
- the need to avoid council members and officers also being appointed to senior positions in the company, if such an eventuality is likely to lead to a conflict of interest

Potential appointees to the board should complete declaration of interest forms.

Appointments to the board should relate to the relevant post or office of the council, not to a specific individual. It follows that, if a council appointed director ceases to be an employee or office holder of the council, then they should automatically no longer be able to hold board membership.

The process for the appointment and renewal of directors should be set out in the articles of association, which should state those appointments which are wholly reserved to the council. For those appointments which are not reserved to the council, the company may establish a remuneration committee to make appointments and remuneration decisions and recommendations to the council.

Appointments should be based on a review of the skills, qualifications, diversity, and other attributes required for the role.

Where a board member is eligible for renewal and reappointment, this should be subject to considering their performance to date and skills, and the needs of the board.

EVIDENCE

C21 There should be evidence that appointments to the board are subject to a documented formal, rigorous, and transparent procedure based on merit and published objective criteria which also promote diversity

4 ENTITY GOVERNANCE ARRANGEMENTS

4.1 Introduction

This section provides a best practice checklist of issues to be considered when reviewing a wholly or partly owned entity, focusing on governance arrangements for the entity itself.

4.2 Articles of association

The entity should have articles of association, documenting its constitution and addressing purpose, conduct of meetings and appointment of directors[3].

For the purposes of applying the relevant exemption under procurement law, the articles for a Teckal company should be consistent with the need to demonstrate that:

- the council exercises over the company a control, similar to that which it exercises over its own departments
- more than 80% of the activities of the company are carried out in the performance of tasks entrusted to it by the controlling council or by other legal persons controlled by that council
- there is no direct private capital participation in the company[4]

EVIDENCE

E1 The entity's articles of association should be clear, up-to-date, and reflective of how the entity is run

[3] See under "Starting a company" at www.gov.uk/government/organisations/companies-house for model articles

[4] Regulation 12(1), Public Contracts Regulations 2015 www.legislation.gov.uk/uksi/2015/102/contents/made

4.3 Business planning

The entity should have an annual business plan which sets out its objectives and how the objectives are to be resourced and achieved. Key areas of focus should include:

- a description of the core offering and articulation of potential future services and/or innovations
- strategy and implementation; a description of the value proposition, underpinned by effective marketing, communications, and branding strategies
- financial break-even analysis, projected surplus or deficit, cash flow, balance sheet and reliance on trading income
- operations and management; an analysis of the entity's capacity and capabilities to fulfil its purpose, in terms of commercial skills, workforce planning, board development, support services, managing the supply chain and clients
- market analysis and a description of market trends and competitors

Requirements to meet the legal criteria in relation to any Teckal companies should also be reflected in the business plan.

EVIDENCE

E2 There should be evidence of an up-to-date business plan that is reflective of the current circumstances and environment in which the entity operates

4.4 Role and behaviours of the board

The board should operate openly and transparently. According to the Cadbury Report[5] "**the basic procedural requirements are that the board should meet regularly, with due notice of the issues to be discussed supported by the necessary paperwork, and should record its conclusions**".

Meetings on at least a quarterly basis would be considered good practice.

[5] The Financial Aspects of Corporate Governance – "The Cadbury Report"

The Cadbury Report states that "**the responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship**".

The Higgs Review[6] suggests that the role of the board includes:

- promoting the success of the company by directing and supervising the company's affairs
- providing entrepreneurial leadership within prudent and effective controls where risk is assessed and managed
- setting strategic aims and ensuring sufficient resources (financial and human) are available to meet objectives
- reviewing management performance
- setting corporate values and standards
- ensuring obligations to shareholders and others are met

The board should have processes to ensure that the entity continues to be financially viable, supported by the role of internal audit and its external auditor.

Larger entities or holding companies should have:

- an audit committee to provide independent scrutiny, challenge, and assurance
- a remuneration committee, which will manage appointments and remuneration decisions (where an appointment is not reserved to the council)

The board should ensure processes are in place to confirm how financial issues are to be dealt with including business planning, budget control, financial systems and financial monitoring and reporting.

The Cadbury Report recommends that boards should "**recognise the importance of the finance function by making it the designated responsibility of a director, who should be a signatory to the accounts on behalf of the board and should have access to the audit committee**".

[6] Review of the Role and Effectiveness of Non-Executive Directors – "The Higgs Review"

The board should undertake in-depth consideration of company matters that are deemed significant including new projects, existing projects, approvals and endorsement of advice.

The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.

There should be a record of the essential functions and other matters which are reserved for board decision and cannot be delegated.

EVIDENCE

E3	There should be evidence that the board meets regularly to consider, review and record discussions and conclusions
E4	There should be evidence of delivery of strategies and plans, including scrutinising key operational and finance performance information
E5	There should be evidence of the desired culture and behaviours
E6	The company structures should be regularly scrutinised in order to ensure they remain fit for purpose
E7	There should be evidence that the board has clear policies and procedures for its members to ensure that actual or potential conflicts of interests are identified, declared, and acted upon

4.5 Role and behaviours of company directors

The Companies Act 2006[7] (sections 171-177) states that directors must:

- act within their powers
- promote the success of the company
- exercise independent judgement
- exercise reasonable care skill and diligence
- avoid conflicts of interest
- not accept benefits from third parties
- declare an interest in proposed transactions or arrangements with the company

[7] The Companies Act 2006 www.legislation.gov.uk/ukpga/2006/46/contents

Directors of wholly or partly owned council entities must also act in accordance with the seven Nolan Principles[8]:

NOLAN PRINCIPLES

SELFLESSNESS
take decisions solely in the public interest (may conflict with board members duties as directors to a company)

INTEGRITY
should not be under any financial or other obligation to outside organisations or individuals

OBJECTIVITY
choices should always be based on merit

ACCOUNTABILITY
submission to public scrutiny and be held accountable for actions

OPENNESS
decisions should be made openly with reasons given

HONESTY
duty to declare any private interests in relation to public duties and actively take steps to resolve any interest that arises

LEADERSHIP
the above principles should be supported and promoted through example

EVIDENCE

E8 There should be evidence that directors have sufficient skills and experience to run the entity

E9 There should be evidence that directors' behaviours are aligned with the requirements of the Companies Act 2006 and the Nolan Principles as well as Cabinet Office's Code of Conduct for Board Members of Public Bodies[9]

E10 The scope of directors' authorities should be documented and clear to all parties

[8] The Seven Principles of Public Life – "Nolan Principles"

[9] Code of Conduct for Board Members of Public Bodies published by the Cabinet Office in 2011 as updated/replaced in June 2019

4.6 Company board composition

Achieving the right board composition should facilitate good governance and minimise the scope for conflicts of interest.

The optimal size of a board should be between five and 10 directors, although this will be dependent on the circumstances of each entity.

Boards of wholly or partly owned council entities are often a mix of council officers, members, and independent directors. Board skills and expertise can be improved through the effective use of independent directors with both public sector and market specific experience. The UK Corporate Governance Code[10] advises that at least half the board (excluding the chair) should be independent non-executives.

Appointments to the board should be subject to a formal, rigorous, and transparent selection procedure based on merit and published objective criteria.

Board composition and individual director performance should be reviewed periodically to evaluate board composition, the effectiveness of individual contribution, and how effectively board members work together to achieve the objectives of the entity.

EVIDENCE

E11 There should be evidence that the board has a diverse membership with the collective skills and attributes needed to lead the entity effectively

E12 There should be evidence that board membership is reviewed regularly for composition and fitness for purpose

4.7 The board and risk management

The board should have ultimate responsibility for risk management within the entity and ensure that appropriate risk management arrangements are in place.

The board should regularly review risks and how they are being managed, and potentially delegate the detailed scrutiny and evaluation of risk to a committee.

[10] The UK Corporate Governance Code, Financial Reporting Council, July 2018 www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf

The board should be aware of its appetite for risk and determine the risk profile for the entity. The board's approach to risk should be proportionate and appropriate to its model. For example, an entity which has borrowed money from the council and needs the council's support for working capital and revenue will have a different risk profile to a trading company which relies exclusively on external revenue.

EVIDENCE

E13 There should be evidence that the board understands the organisation's risk profile and the effectiveness of key controls and regularly reviews risks and risk appetite

4.8 Board members' skills and development

Training should cover legal roles and responsibilities, company directors' roles and companies generally. The training should include responsibilities under the Companies Act 2006, Insolvency Act 1986[11], Bribery Act 2010[12], Modern Slavery Act 2015[13], Data Protection Act 2018[14] and Health and Safety at Work etc. Act 1974[15].

The entity should seek a board which includes a range of skills and backgrounds including commercial, financial, business development, technical, legal and HR experience. Those skills may either be provided by council nominees or by engaging non-executive directors.

The Cadbury Report states that "**given the varying backgrounds, qualifications and experience of directors, it is highly desirable that they should all undertake some form of internal or external training; this is particularly important for directors, whether executive or non-executive, with no previous board experience. Newly-appointed board members are also entitled to expect a proper process of induction into the company's affairs. It is then up to individual directors to keep abreast of their legislative and broader responsibilities**".

[11] The Insolvency Act 1986 www.legislation.gov.uk/ukpga/1986/45/contents

[12] The Bribery Act 2010 www.legislation.gov.uk/ukpga/2010/23/contents

[13] The Modern Slavery Act 2015 www.legislation.gov.uk/ukpga/2015/30/contents/enacted

[14] Data Protection Act 2018 www.legislation.gov.uk/ukpga/2018/12/contents/enacted

[15] Health and Safety at Work etc. Act 1974 www.legislation.gov.uk/ukpga/2018/12/contents/enacted

There should be an annual evaluation of board, committee, chair, and director performance. UK Corporate Governance Code suggests that the chair should consider having this evaluation externally facilitated.

EVIDENCE

E14 There should be documented evidence that the board regularly undertakes a skills audit to ensure that it has an appropriate balance of skills and experience

E15 There should be evidence of ongoing professional training provided to ensure that all board members are up-to-date in their understanding and supported in their roles

4.9 Role of executive directors and non-executive directors

It is important to distinguish the between the roles of executive director, non-executive director and independent non-executive director. Legally, they all share the same individual and collective duties and responsibilities. However, they should all bring a distinct focus to their roles.

The role of executive directors will vary greatly from entity to entity. Essentially, they are focused on running the entity's business activities and implementing the board's plans and policies. They may be expected to be board members, although this is not essential.

Non-executive directors have a wider role, providing independent and constructive challenge.

Council appointees to boards will generally be expected to fulfil the role of a non-executive director. However, council officers who are appointed to undertake a dedicated role within an entity may be appointed in an executive capacity, such as to undertake the role of a finance director.

The Cadbury Report states that "**non-executive directors have two particularly important contributions to make to the governance process as a consequence of their independence from executive responsibility... The first is in reviewing the performance of the board and of the executive. The second is in taking the lead where potential conflicts of interest arise**".

Independent non-executive directors are external appointees who do not hold a role as officers or members within the council. Entities should consider the use of independent non-executive directors to improve the quality of board representation. These appointments should be external to the council and provide detailed experience and insight into the company's particular area of activity as well as providing independent and constructive challenge.

According to Higgs[16], the role of a non-executive is to:

- challenge, and contribute to the development of the company's strategy
- scrutinise performance of management in meeting agreed goals and monitor reporting of performance
- satisfy themselves on the accuracy of financial information and that financial controls and risk management are robust and defensible
- determine executive directors' remuneration and prime role in appointing/removing senior management

Higgs describes a number of desirable personal attributes and behaviours of non-executive directors:

HIGGS' DESIRABLE PERSONAL ATTRIBUTES AND BEHAVIOURS OF NON-EXECUTIVE DIRECTORS

- Sound judgement and an enquiring mind
- Knowledge of the business, its operating environment, and issues it faces
- Integrity, probity, and high ethical standards
- Objectivity as the basis for questioning and challenging accepted thinking of executives
- Strong interpersonal skills

[16] Review of the role and effectiveness of non-executive directors, Department of Trade and Industry, January 2003 web.archive.org/web/20080910081648/http://www.berr.gov.uk/files/file23012.pdf

EVIDENCE

E16 There is evidence that the role of executive directors is clearly defined and documented

E17 Non-executive directors are in place to bring an independent judgement to bear on issues of subject matter expertise, strategy, performance, resources including key appointments, and standards of conduct

E18 There is documented evidence that the board values the role of non-executive directors, and their views are influential in the board's decisions

4.10 The role of the board chair

The Cadbury Report describes how the chair's role in securing good corporate governance is crucial. Chairs are primarily responsible for the workings of the board, for its balance of membership subject to board and shareholders' approval, for ensuring that all relevant issues are on the agenda, and for ensuring that all directors, executive and non-executive alike, are enabled and encouraged to play their full part in its activities.

Chairs should be able to stand sufficiently back from the day-to-day running of the business to ensure that their boards are in full control of the company's affairs and alert their obligations to their shareholders.

In addition, the chair should have the following leadership responsibilities:

- formulating the board's strategy
- promoting the efficient and effective use of staff and other resources
- delivering high standards in terms of integrity and propriety

The Cadbury Report states that the chair's role "**should in principle be separate from that of the chief executive. If the two roles are combined in one person, it represents a considerable concentration of power… therefore, there should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision**".

EVIDENCE

E19 There is evidence that the chair provides clear board leadership, supporting the directors and chief executive and taking account of the shareholders views

4.11 Financial management

The business plan and business planning process are critical parts of the governance culture and environment. They are the basis for monitoring financial performance and should also feed into the medium-term financial planning of the council in situations where it expects to receive dividends, loan repayments, capital receipts or provide financial support in terms of working capital or longer-term finance.

Board reports should feature clear articulation of the current financial position of the company in terms of its trading position (income and expenditure), liquidity (cash flow) and solvency (balance sheet).

The company should have an independent financial status from the council. This should include separate bank accounts and designated signatories.

The financial transactions of the company should be recorded on the company's own, separate ledger system and the council should be able to demonstrate how the results of the company are consolidated into its own group accounts.

The company should have a set of documented financial policies and procedures which describe areas such as borrowing and overdraft limits and levels which are reserved for council approval. These reserved matters should also be documented in the company's articles of association.

It should operate a system of internal controls that are consistent with these policies and procedures. The company's internal controls should be the subject of periodic testing by internal auditors, whether they be the council's own internal audit function or separately appointed by the company.

EVIDENCE

E20 There should be a fully documented and approved business plan that is consistent with and no more than 12 months older than the previous business plan. The changes within the updated business plan should accord with the trajectories that are apparent from monthly financial and non-financial performance reports

E21 The financial transactions and values attributable to the company within the council's medium term financial plan should agree with the projections in the business plan

E22 Board reports should include clear presentation of the monthly income and expenditure position of the company as well as a cash flow statement and balance sheet

E23 There should be evidence of an annual audit letter from the council's external auditors, confirming the degree of confidence they hold in respect of consolidation or treatment of financial instruments entered by the company

E24 Documented financial policies and procedures should be available

E25 There should be evidence of an effective annual internal audit programme

5
ALTERNATIVE DELIVERY MODELS

5.1 Introduction

The **Localism Act 2011** gave local authorities new and broader general powers of competence to trade and since that time there has been a surge in the creation of new companies. These range from wholly owned and partly owned companies, joint ventures with either the public or private sector, and social enterprises.

The main benefits of an alternative delivery approach are perceived to be:

Establishing an alternative delivery approach such as a wholly or partly owned entity is a significant strategic decision that should be given consideration with an appropriate level of analysis and attention.

This section of guidance aligns with HM Government's Sourcing Playbook **Delivery Model Assessments** process. It covers the approach councils should adopt and suggests questions they should address when thinking about setting up a new Local Authority Trading Company (LATCo).

5.2 Framing the challenge

The initial challenge is to determine whether the council's service and the outcomes it delivers can be best delivered by alternative means.

If there is insufficient oversight and assurance placed on this fundamental analysis, particularly where a commercial initiative is progressed at speed, this will create significant operational, commercial, and reputational risks.

From the outset, it is important to clarify the objectives, timescales, and drivers of change.

A dedicated core team of suitably skilled individuals should be appointed that will input into the process. This may include finance, commercial, programme and operations and technical experts.

The approach to governance needs to be established, as well as a clear understanding of the decision-making process.

Identifying the final approvers of the recommendations to establish (or not) LATCos is critically important.

A good understanding of all the key stakeholders who will be involved in and/or affected by the outcomes needs to be developed, ensuring that all relevant parties can be engaged in the assessment process.

There should also be suitable administrative and project management support available to keep things on track.

5.3 Defining the service, delivery model options and data inputs

It is important to identify the service components to be delivered and the outcomes sought and the options for how they might be delivered. It is essential to develop a clear definition of these before starting the delivery model assessment to enable an effective comparison of alternative delivery models.

Once a long list of options has been developed, potential delivery models should be short-listed based on critical success factors, practical limitations, and discussions with senior stakeholders.

The final list of potential delivery models should be signed off at member and senior officer level before evaluation.

5.4 Potential options for consideration

In this section, we outline the main options for delivery models that local authorities may choose to consider:

MAIN OPTIONS FOR DELIVERY MODELS

- In-house delivery
- Local authority company (limited by shares or guarantee)
- Joint service delivery (or public sector consortium) – public public partnership
- Joint venture company with private sector partner
- Outsourced service delivery – public private partnership

A description of potential options is provided below, including an overview of the benefits and risks of adopting each model. It should be noted that this list is not exhaustive, and the specific options considered by each council will differ depending on its priorities and local circumstances.

The most important thing is that councils should not jump to a specific model without a comprehensive consideration of the potentially viable options for delivering the outcomes required. For example, in addition to the option of establishing a company or participating in a joint venture, councils may consider other options including in-house delivery, outsourcing, and sharing services with another public body.

In-house delivery

Description	This option involves services/functions being delivered in-house
Benefits	The council retains full control of service delivery and of any efficiencies achieved Existing skills and knowledge of service are retained Familiarity of relationships, experience, and expertise
Risks and issues for consideration	Ability to invest in, resource and upskill the service/function may be constrained No benefits of scale or sharing of resources/expertise All risk and responsibility retained by the council

Council owned company (for example, company limited by shares or company limited by guarantee)[17]

Description	**This option involves the council establishing a company** The company limited by shares model is designed for profit distribution to the participating organisations A company limited by guarantee is not designed for profit distribution
Benefits	Limited liability for shareholders Ringfences risks and liabilities, but council still retains reputational risk Freedom from direct management or standing orders of the council. A company has the capability to employ its own staff. Employees can be given greater incentive to succeed through new employment opportunities and financial reward, thereby promoting cultural change and developing a commercial mind-set Under this model, commercially delivered incidental services can be provided to the private sector (under Section 95 of the Local Government Act 2003) Commercial focus on business plan and goals Flexibility for the company to buy/sell/hold assets
Risks and issues for consideration	Can be administratively time consuming both in terms of set up and ongoing running This model requires compliance with the requirements of the Companies Acts and the administration of setting up and operating a separate entity There are additional regulatory requirements to comply with e.g., company audit and annual returns. Income may be liable to corporation tax VAT structures will be changed Potential loss of control to directors whose primary duty is to the company, not the council Risk exposure will vary depending on whether services are provided solely to the council or more widely to external organisations On paper, the "limited by shares/guarantees" structure limits councils' liabilities. However, there is a question as to the extent to which a council would realistically allow a company to fail without meeting their liabilities. Consideration would be needed with regard to what interventions the council would make should the company make significant losses Potential for reputational damage to the shareholders in the event of non-performance

[17] There are a range of legal structures that can be considered under this broad commercial entity option which may include Community Interest Companies (intended for social enterprises that wish to use assets and profits for public benefits, with mandatory asset lock and controls on dividends to reassure potential participants, donors, or investors) and Industrial & Provident Societies for Community Benefit (organisations with social objects to run a trade or business for the benefit of the community).

Joint service delivery or public sector consortium (shared services)

Description	**Two or more councils or other public bodies join to effect service delivery and deliver better outcomes**
Benefits	Potential economies of scale Scope for seamless service delivery Sharing of skills and improved resilience
Risks and issues for consideration	Potential impact of future changes in political control Problem of co-ordinating objectives and requirements of each local or public body Problem of assimilating procedures and IT systems of each public body Available capital will not necessarily be increased Long period of complex negotiation may be needed

Joint venture with the private sector

Description	**Council enters into a joint venture with a private sector partner to facilitate the provision or delivery of services, investment and/or development** This can include the creation of a separate legal entity
Benefits	May introduce capital resources which would not otherwise be available to the council Improved access to skills, resources, and systems of the partner (commercial acumen, technology) Potential wider opportunities for employees Risks in service delivery identified and allocated – enables some risk transfer Council influence can be preserved through controls on company decision-making
Risks and issues for consideration	Potentially significant time and costs involved in establishing the vehicle Additional regulatory requirements (company audit, annual returns) and potential tax implications Challenges in matching diverse organisational cultures in one entity Need for council vigilance in relation to commercial risks and cost structures

Outsourcing

Description	**The council contracts with a private sector provider to provide certain services** This generally involves a total transfer of the service provision to the service provider
Benefits	The competitive nature of the procurement should ensure the most economic price Scope for investment in the service from the partner A mature market exists
Risks and issues for consideration	Potential concerns over loss of direct control of service and risk of becoming "locked in" with a single provider TUPE[18] issues may prevent savings and lock in terms and conditions that would otherwise change over time Potential loss of key people from the council Additional costs of client-side arrangements Intense public scrutiny and reputational damage if the service provider performs poorly

5.5 Establishing strategic and operational evaluation criteria

There are many potential issues to consider in the selection of a delivery model.

Evaluation criteria will be specific to the service or function under consideration, but the following areas give some examples of the potential issues that might help to determine the most appropriate strategic approach for delivery.

Individual criteria should be given weightings reflecting the importance of that criterion to the council and the nature of the specific service.

The criteria should be signed off at member and senior officer level board before the evaluation of the delivery options begins.

[18] Transfer of Undertakings (Protection of Employment) regulations (TUPE) www.gov.uk/transfers-takeovers

Description	Issues to consider
Strategy and policy	How well does the delivery model align with corporate strategies and policies?
Transition and mobilisation	How easy will it be to transfer existing services into the new model?
People and assets	What capabilities and skillsets are needed and what is the existing capacity (internal or in the external market)?
Service delivery	How will the delivery model help to deliver ongoing quality, innovation and continuous improvement?
Risk and impact profile	Have the risks that may impact the delivery of services or on the council's finances been identified?

5.6 Assessing the cost and benefits of the options under consideration

A financial model should be used to help evaluate different delivery model options. For example, a council may wish to compare the expected cost and benefits of establishing and running a wholly or partly owned entity with the cost and benefits of other delivery models under consideration.

An appraisal of the company model against the in-house delivery model will typically focus on a comparison of the expected whole life cost of procuring a service from an outside supplier, including the cost of additional market factors such as risk and profit, against the whole life cost to deliver a service using internal resources and expertise.

5.7 Conducting the evaluation and aligning the analysis

A cross-functional team should evaluate each criterion against the agreed weightings.

Learning should be derived from objective evidence, past projects, and colleagues across the public and private sector (this may include engaging with the market) to test and sense-check findings.

There are several critical success factors in completing a successful assessment:

- appropriate governance and sponsorship with appropriately qualified individuals
- senior leadership should be clear about why the evaluation is taking place, provide sponsorship, clear governance, and allocate suitably experienced and skilled individuals
- good availability of input data
- data should be available to input into the model design and evaluation
- informed strategic and operational criteria
- independent facilitation should take place to bring together stakeholders, clarify objectives and drive credible outcomes
- realistic timelines
- enough time should be allocated to run a comprehensive process

5.8 Key questions at the evaluation stage

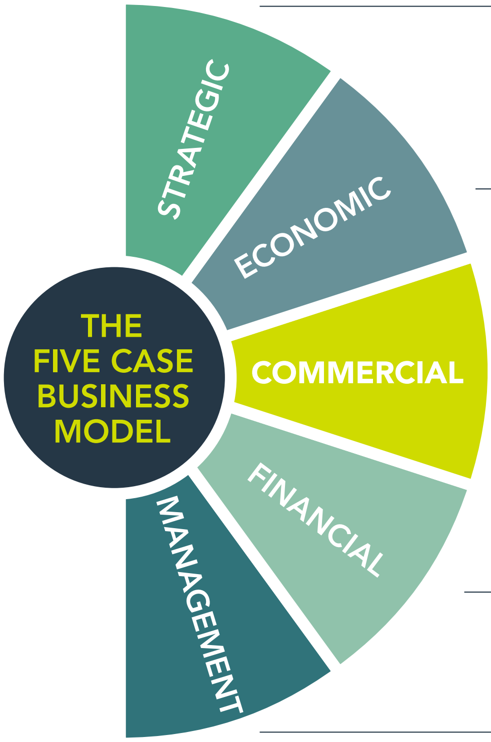
Specific questions should be asked when evaluating the viability and benefits of establishing a new commercial entity.

Criteria	Issues to consider
Strategy and policy	How will the delivery model ensure delivery of strategic objectives, such as social value? What will be the internal council impact on officers and elected members (including training and recruitment implications), service and departmental structures, staffing requirements, and financial budgets?
Legal and financial	What is the optimum legal authority for activities which the new activity will pursue? What is the most appropriate and beneficial legal form and structure for a new entity (taking account of the objectives of the council)? What external legal and financial obligations which will be placed upon the entity and to what extent will these impact upon the objectives of the council and the relationship between the council and the new entity?

Criteria	Issues to consider
Governance and risk	Who will control the entity and what does that mean for governance, leadership, and the legal status of the entity? What is the optimum form of and limits to the relationship between the entity and council officers and elected members? How will performance be managed and monitored? What are the commercial and operational risks that relate to the establishment of the new entity? Who is best placed to manage these risks and how might they be mitigated?
People and assets	Is there a clear understanding of TUPE considerations or asset transfer/ownership considerations? Has the council ensured it has sought legal and commercial advice on any issues and considered potential pension liabilities?
Commercial	Has sufficient data on market demand both locally and wider afield been gathered and investigated? Has sufficient financial, operational, past performance and governance data on potential competitors been gathered and interrogated? Has the impact of the new entity been considered on existing local infrastructure and particularly on public, private and third sector organisations that are currently operating in the market sector that the entity will enter? Does the impact that has been considered include financial and relationship issues? Does the entity intend to trade and if so, will this be with other local authorities? Or to a wider market?
Stakeholders	Is there evidence of support by relevant members and senior officers in relation to the establishment of the new entity?
Skills and capability	Have suitably qualified subject matter experts been engaged to provide appropriate input into the evaluation? Has suitable and appropriate specialist financial and taxation advice been sought from independent consultants?

5.9 Developing a business case

Before setting up a company a council must prepare a business case. This should follow the HM Treasury Green Book approach to public sector investment, adopting the five-case model, as set out in the Guide to Developing the Project Business Case, Better business cases: for better outcomes[19].



The strategic case demonstrates that the spending proposal provides business synergy and strategic fit and is predicated upon a robust and evidence based case for change. This includes the rationale of why intervention is required, as well as a clear definition of outcomes.

The economic case demonstrates that the spending proposal optimises public value (to the UK as a whole).

The commercial case demonstrates the "preferred option" will result in a viable procurement and well-structured deal.

The financial case demonstrates the "preferred option" will result in a fundable and affordable deal.

The management case demonstrates the "preferred option" is capable of being delivered successfully, in accordance with recognised best practice.

5.10 Key activities at business case stage

Specific activities should be undertaken when developing the business case for the establishment of a new commercial entity. They include activities to develop and communicate the business case.

[19] Guide to Developing the Project Business Case, Better business cases: for better outcomes **assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749086/Project_Business_Case_2018.pdf**

Criteria	Issues to consider
Strategy and policy	What are the compelling reasons for establishing the entity and what should be achieved? Which options have been considered and what are the reasons for selecting a commercial entity as the way forward? Which form and type of entity has been chosen as the preferred option and what are the reasons for that choice? What are the desired outcomes and objectives and how do these fit with and contribute to the overall strategy of the council? This should include consideration of any dependencies with other projects, programmes or initiatives Why it is the right time to establish the new entity?
Legal and financial	What are the legal considerations relating to the establishment of the entity? What levels of control and freedom are required for the organisation? What set-up costs will be incurred by both the entity and the council? Has the high-level viability of the new entity been assessed? Are there any affordability issues given other commitments? Where appropriate, how will the new entity enable the maximisation of possible commercial and grant funded income streams? And, also the minimisation of VAT and other taxation impacts? What financial, legal, taxation and operational advice has been obtained from external consultants and other sources?
Governance and risk	What are the key risks and how they will be managed?
People and assets	Has advice been sought on staffing issues, including TUPE arrangements, union negotiations and pension transfers?
Commercial	Has the competitive landscape been assessed, as well as the positioning of the new entity within that landscape? What will be the impact on the local and wider operating environment and market?
Stakeholders	What is the appetite for change, including stakeholder engagement and the level of support provided?
Skills and capability	What are the capabilities of existing staff to oversee and manage the new entity and what will be the future training and recruitment requirements?

5.11 Recommendations and approvals

From the outset councils should be clear about the assurance and approval process at each stage.

A board or cabinet decision should be made at each stage to progress, or to stop the process, if a viable option cannot be moved forward.

5.12 Key activities prior to approval

Specific activities should be undertaken prior to the council approving the establishment of a new commercial entity.

Criteria	Activities to be undertaken
Legal and financial	Ensure all legal, financial, taxation, operational and governance duties, responsibilities and obligations of the chosen legal form of entity are understood and communicated to all officers and members and all potential executives and non-executives of the new entity Ensure that the proposed arrangements comply with procurement and state aid legislation Ensure that all external legal, financial, taxation and operational advice has been understood and acted upon Confirm the financial, legal, and reputational impacts if the entity fails
Governance and risk	Identify possible exit or alternative strategies if the new entity is unsuccessful or there is a change in strategy within the council Identify and clarify the council officer and/or member involvement on the entity board
Commercial	Ensure understanding of updated realistic demand projections based upon third party sector expertise Ensure that monitoring information requirements and arrangements are clearly identified in both the council and the new entity

5.13 Implementation

Once the final delivery model recommendation has been signed-off through appropriate governance forums there should be a clear plan in place for implementation.

5.14 Key transition activities

Specific transition activities should be undertaken prior to the formal establishment of the new entity.

Criteria	Activities to be undertaken
Strategy and policy	Ensure that arrangements are in place for both leading the new entity and leading the transition to put it in place
Legal and financial	Confirm that the choice of entity delivery vehicle chosen maximises the possibility of commercial and grant funding income streams and minimises the impact of VAT and other taxation and is based on clear analysis of external legal, financial, taxation and operational advice Test the adequacy of the entity's opening financial projections including that the opening cash flow arrangements are adequate Confirm any contract arrangements, including arrangements for annual review, initial contract length and projected longer term budget impacts on both the council and the entity Ensure that adequate financial controls are in place Ensure that the formation and start-up of the entity has been notified to all relevant statutory and regulatory bodies Confirm that any ongoing services or assets that might be provided by the council are underpinned by agreements between the parties and can legally be provided, including consideration of the leases and/or licences relating to all assets and buildings to be used by the entity Ensure that the entity's systems and processes, including financial and payroll processes, are fit for purpose Ensure that the council have adequate insurance cover for the new entity's liabilities and assets Ensure that the entity's Articles of Association and other governing documents are fit for purpose and allow the organisation to fulfil its obligations and meet its objectives

Criteria	Activities to be undertaken
Governance and risk	Confirm that the business case still makes sense in terms of funding, affordability and expected benefits Ensure that the plan through to completion of transition is appropriately detailed and realistic, including risk management arrangements Identify and document service and financial risks Develop the performance measures and tools to be used Confirm the limits of council officer and member involvement in the day to day operational and strategic management of the entity Ensure that potential conflicts of interest have been addressed for council members or officers who will also holding positions with the new entity Confirm that the necessary and appropriate assurance bodies such as auditors, have been appointed or are in the process being appointed
People and assets	Ensure that all TUPE and pension transfer arrangements have been finalised Develop the processes for appointing entity non-executives, executives and any external appointments and commencing any recruitment processes
Commercial	Review the business model and commercial model and whether these appear to be viable given the overall environment within which the new organisation will be operating Develop a detailed, credible business plan which is subject to challenge and review
Stakeholders	Confirm that stakeholder support remains strong Develop and implement a public relations strategy
Skills and capability	Confirm that the right capacity and capability is in place to both transition to and then run the new organisation Develop requirements for training and support of officers and members and for prospective entity non-executives, executives and staff on new arrangements and relationships Identify areas of expertise and personnel to appoint to entity board

5.15 Review

Once the entity is operational, it should be subject to effective oversight and regular review. Sections 3 and 4 cover the governance arrangements which need to be in place, within both the council and entity, to enable that oversight and review.

6
STANDARD DOCUMENTS REQUIRED FOR A REVIEW

When carrying out a review, documentation should be made available as evidence, to provide assurance that the governance structures and processes for managing risk are sufficiently robust and the entities are meeting councils' expectations.

As a minimum, these documents should include:

12 months of minutes (to cover the full business planning cycle) for all entity boards, any shareholder group(s), and engagements between shareholder groups and entity board members

Key executive and scrutiny reports

The entity's business plan and other key documents which document performance to date

Key governance documentation such as:

– articles of association

– shareholder's agreement

– members' agreement

– any financial agreements (covering any support or services provided by either party to the other)

Governance and structure charts and any descriptions of key roles and responsibilities for:

– the entity

– council oversight of the entity

The original business case which resulted in the creation of the entity and any updates

Terms of reference for:

– the shareholder role

– the board

– the entity's audited accounts

The risk logs for:

– the entity

– the council

The policies and processes to manage conflicts of interest for the council and the entity

Board member training plans

7
KEY REFERENCE DOCUMENTS

Code of Conduct for Board Members of Public Bodies published by the Cabinet Office in 2011 as updated/replaced in June 2019

This code sets out the personal and professional standards expected from non-executive board members of UK public bodies and forms part of their terms of appointment. The 2019 code includes new provisions making clear that bullying, harassment, or other discriminatory behaviour will not be tolerated. It also introduces a new requirement for the board member to notify the sponsor department of any bankruptcy, current police investigation, unspent criminal conviction, or disqualification as a company director. The new code also reminds office holders of their role in promoting diversity and inclusivity within their organisation, including at board level.

The Seven Principles of Public Life – "Nolan Principles"

The Seven Principles of Public Life outlines the ethical standards those working in the public sector are expected to adhere to. They were first set out by Lord Nolan in 1995 in the first report of the Committee on Standards in Public Life and are included in a range of Codes of Conduct across public life.

The Financial Aspects of Corporate Governance –
"The Cadbury Report"

This report was published in December 1992. The committee, chaired by Sir Adrian Cadbury, had a remit to review those aspects of corporate governance relating to financial reporting and accountability and to make recommendations to raise standards in corporate governance.

The 2018 UK Corporate Governance Code

This code builds on the Cadbury Report, revising and expanding the guidance to take account of the increasing demands on the UK's corporate governance framework.

Review of the Role and Effectiveness of Non-Executive Directors – "The Higgs Review"

This report was authored by Derek Higgs and was published in January 2003. It was commissioned by the Secretary of State for Trade and Industry.

Corporate Governance Guidance and Principles for Unlisted Companies in the UK

This document was published in November 2010 by the Institute of Directors and European Confederation of Directors' Associations.

UK Government Investments Framework Document April 2018, Updated July 2020

A framework document drawn up by HM Treasury in consultation with UK Government Investments Limited, a private limited Government-owned company.

Nottingham City Council – Report in the Public Interest concerning the Council's governance arrangements for Robin Hood Energy Ltd – Grant Thornton

This report was issued in the Public Interest under section 24 and Schedule 7 of the **Local Audit and Accountability Act 2014**.
It addresses failings in the Council's governance for Robin Hood Energy (RHE), which was established in 2015 as a wholly owned not-for-profit subsidiary of the Council.

Public Interest Report – Governance issues in relation to remuneration of Council officers for work as Directors of City of York Trading Ltd February 2016 – Mazars

This report related to payments made in March 2015 by City of York Trading Ltd (a trading company specialising in the provision of temporary staff and wholly owned by the Council) to two of the company's executive directors who were also officers of the Council. It provides lessons to be learnt and to ensure the future good governance of a Council's relationships with its trading companies.

The Green Book guidance – HM Treasury, 2018

This document provides guidance for public bodies on how to appraise policies, programmes and projects. It also provides guidance on the design and use of monitoring and evaluation before, during and after implementation. It contains the 'Five Case Model' – the required framework for considering the use of public resources to be used proportionately assess costs and risks.

The Sourcing Playbook – Cabinet Office, May 2021

This document provides guidance on choosing the best model for delivering public services.

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8 SUMMARY OF EVIDENCE

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
Governance aims						
C1	There should be evidence that the council and senior management recognise the importance of establishing appropriate and proportionate governance arrangements for the oversight of entities	▸ The council has sufficient control to ensure that its investment is protected, appropriate returns on investment can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the council ▸ "Teckal" companies demonstrate compliance with relevant exemption requirements under EU procurement law				
C2	There should be evidence of a culture of challenge and clarity relating to the purpose, efficiency, effectiveness, specific objectives, and freedoms of the entity	▸ There is a culture of challenge ▸ There is a clarity of purpose ▸ The entity has clear objectives ▸ The entity has sufficient freedoms to achieve its objectives				

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	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
The council's shareholder role						
C3	There should be a clearly designated council shareholder role or function which is both understood and recognised by the council and the entity (and documented in terms of reference)	▸ The council has a designated "shareholder" role to represent its ownership of the entity ▸ The shareholder provides oversight of any decisions taken by the entity ▸ The shareholder provides a regular review of whether the entity provides the most effective vehicle to deliver the outcomes it requires and whether there are suitable alternatives ▸ The process for appointing a shareholder is set out in terms of reference				
C4	There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting any changes made as the entity has developed, in a shareholder's agreement (or as set out in the company's governing articles of association)	▸ The council has sufficient control to ensure that its investment is protected, appropriate returns on investment can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the council ▸ "Teckal" companies demonstrate compliance with relevant exemption requirements under EU procurement law				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
C5	There should be evidence that the individual undertaking the shareholder role is provided with suitable training and support commensurate with the role	▸ There is a culture of challenge ▸ There is a clarity of purpose ▸ The entity has clear objectives ▸ The entity has sufficient freedoms to achieve its objectives				
C6	There should be evidence of formal periodic shareholder/Chair/CEO meetings with effective supporting papers to inform subsequent company board meetings	▸ The shareholder has a mechanism to communicate its views to the entity ▸ Periodic and effective shareholder/Chair/CEO meetings are documented				
Council oversight, scrutiny, and governance framework						
C7	There should be documented evidence of transparent member and officer scrutiny, oversight, and approval of business plans	▸ There is a clearly defined governance framework underpinned by clear governance principles ▸ The role of the shareholder is separate from the board ▸ The business plan is current and updated at least annually ▸ The business plan is challenged and monitored by the board				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
C8	There should be evidence of a clear set of KPIs that fall out of the business planning process	▸ The council regularly undertakes an objective assessment of how successfully each entity supports its policies and strategies ▸ KPIs are relevant to "SMARTER" goals ▸ KPIs are reported and monitored within the context of the governance framework				
C9	There should be evidence that senior company staff are performance managed against KPIs	▸ Board, committee, chair, and director performance is evaluated annually, including against agreed KPIs				
C10	There should be evidence of ongoing assessment of value-for-money and quality offered by the entity through an adequately resourced monitoring function	▸ Regular reviews take account of value-for-money and performance quality				
C11	There should be ongoing assessment of risks relating to the entity, supported by processes to ensure that risks are managed as part of the council's overall risk management approach, with appropriate escalation and reporting	▸ The council regularly reviews risks relating to its entities and establishes whether they are effectively managed and scrutinised ▸ The council's overview and scrutiny committee (or equivalent) provides overview, pre-decision scrutiny and call-in decisions in relation to the entity				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
C12	There should be evidence of a consistent approach across the council when it comes to engaging with its entities	▸ All council entities are managed in a consistent way with appropriate support, guidance and controls				
C13	The council should have clear and unfettered access to audited accounts for its entities	▸ The council's audit committee pays specific attention to accounts and audit reports ▸ The council's internal auditors are able to gain clear and transparent access to financial information and oversight of internal controls				
Business case for the entity						
C14	A business case which assessed the risk involved in establishing the entity and recommended its establishment, taking account of other potential delivery models, should be available to review	▸ There is a clear and comprehensive business case that recommended the creation of the entity ▸ The business case took account of alternative delivery methods, with the case for the entity's creation having clear benefits over other methods				
C15	Objectives of the entity should be clearly defined and documented, and regularly reviewed to ensure that its operation continues to support council policy and strategy, including periodically reviewing the business case to ensure it is still valid	▸ The objectives of the entity are clearly articulated, defined and documented ▸ The objectives are regularly reviewed ▸ The objectives continue to reflect council policy and strategy ▸ The business case and objectives are regularly reviewed to ensure they are still valid				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
Agreements with the entity						
C16	Agreements should be documented between the council and the entity for any support or services provided by either party to the other party	▸ The council and entity have clear and documented agreements for any services or support provided by either party to the other party ▸ There is a clear process for escalation if the support or services agreements are not performed to either party's satisfaction				
C17	All agreements should be clear, up-to-date, and regularly monitored and reviewed, with any changes to agreements documented so that a clear audit trail exists	▸ Agreements for support or services between the parties are up-to-date and regularly monitored and reviewed ▸ Changes to agreements are documented with a clear audit trail				
Avoiding and managing conflicts of interest						
C18	There should be evidence that a culture exists whereby actual or potential conflicts of interests are identified, declared, and acted upon, including evidence of appropriate training across the organisation	▸ All parties have been trained and demonstrate a commitment to avoiding and monitoring actual or potential conflicts				

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	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
C19	The council should have clear and up-to-date policies and processes to consistently manage actual conflicts or potential conflicts of interest, including a clear process for investigations and procedures for appropriate disciplinary actions in the event of breaches	▸ There is a clear conflict of interest policy which is managed actively ▸ There is a clear process for investigating and dealing with breaches of the conflicts of interest policy ▸ Internal and external auditors review the management of conflicts of interest and escalate any concerns to the Monitoring Officer				
C20	The roles, responsibilities and reporting lines of officers and members who are involved in council oversight of the entities, the provision of services between the entities or the running of the entities should be clearly defined and documented	▸ Officers and members make themselves available to scrutiny and other council governance forums				
Council appointments to the board						
C21	There should be evidence that appointments to the board are subject to a documented formal, rigorous, and transparent procedure based on merit and published objective criteria which also promote diversity	▸ Board members have completed declaration of interest forms ▸ Appointments to the board are relevant to the post or office of the council ▸ Council appointed directors cease to be members if they leave their qualifying roles ▸ The process for the appointment and renewal of directors is set out in the articles of association				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
		‣ If there is a remuneration committee, relevant matters are referred appropriately ‣ Appointments are based on a review of the skills, qualifications, diversity, and other attributes required for the role ‣ Where a board member is eligible for renewal and reappointment, this is subject to considering their performance to date and skills, and the needs of the board				
Articles of association						
E1	The entity's articles of association should be clear, up-to-date, and reflective of how the entity is run	‣ The entity has articles of association, documenting its constitution ‣ The articles address the entity's purpose, conduct of meetings, and role and appointment of directors ‣ If the entity is a Teckal company, the articles demonstrate that the council exercises control				
Business planning						
E2	There should be evidence of an up-to-date business plan that is reflective of the current circumstances and environment in which the entity operates	‣ There is an up-to-date business plan, setting out the organisation's objectives and how these will be resourced and achieved ‣ Requirements to meet the legal criteria in relation to any Teckal companies are reflected in the business plan				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
Role and behaviours of the board						
E3	There should be evidence that the board meets regularly to consider, review and record discussions and conclusions	▸ The board meets regularly, and all decisions are recorded and documented ▸ Decisions are taken at the appropriate place, including deferral and recommendations of decisions on matters that are reserved for the shareholder				
E4	There should be evidence of delivery of strategies and plans, including scrutinising key operational and finance performance information	▸ The board has delegated detailed scrutiny to committees or directors with appropriate skills, including financial management ▸ The board challenges performance and key financial and operational reporting				
E5	There should be evidence of the desired culture and behaviours	▸ The board promotes the success of the company ▸ The board provides entrepreneurial leadership ▸ Prudent and effective controls are demonstrated where risk is assessed and managed ▸ The board sets strategic aims and ensures sufficient resources (financial and human) are available to meet objectives ▸ The board reviews management performance, including that of the CEO/MD and leadership team ▸ The board sets corporate values and standards ▸ The board ensures obligations to shareholders and others are met				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
E6	The company structures should be regularly scrutinised in order to ensure they remain fit for purpose	▸ The company structures are regularly reviewed ▸ Financial and performance benchmarking exercises are carried				
E7	There should be evidence that the board has clear policies and procedures for its members to ensure that actual or potential conflicts of interests are identified, declared, and acted upon	▸ The board regularly monitors conflicts of interest, including with suppliers and users				
Role and behaviours of company directors						
E8	There should be evidence that directors have sufficient skills and experience to run the entity	▸ Directors' skills align well to the organisation's purpose and objectives ▸ Directors are trained so that they are competent in undertaking their roles and responsibilities				
E9	There should be evidence that directors' behaviours are aligned with the requirements of the Companies Act 2006 and the Nolan Principles as well as Cabinet Office's Code of Conduct for Board Members of Public Bodies	▸ Directors: ▪ act within their powers ▪ promote the success of the company ▪ exercise independent judgement ▪ exercise reasonable care skill and diligence ▪ avoid conflicts of interest ▪ do not accept benefits from third parties ▪ declare an interest in proposed transactions or arrangements with the company				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
		Directors act in accordance with the seven Nolan Principles: ■ selflessness ■ integrity ■ objectivity ■ accountability ■ openness ■ honesty ■ leadership				
E10	The scope of directors' authorities should be documented and clear to all parties	Directors' authorities are demonstrated in a scheme of delegation The scheme of delegation includes reference to matters that are reserved for board decision and cannot be delegated				
Company board composition						
E11	There should be evidence that the board has a diverse membership with the collective skills and attributes needed to lead the entity effectively	There are between five and ten directors on the board At least half of the directors are independent non-executives Appointments to the board are subject to a formal, rigorous, and transparent selection procedure based on merit and published objective criteria				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
E12	There should be evidence that board membership is reviewed regularly for composition and fitness for purpose	▸ Board composition and individual director performance is reviewed periodically to evaluate board composition, the effectiveness of individual contribution, and how effectively board members work together to achieve the objectives of the entity				
The board and risk management						
E13	There should be evidence that the board understands the organisation's risk profile and the effectiveness of key controls and regularly reviews risks and risk appetite	▸ The board demonstrates ultimate responsibility for risk management within the entity and ensures that appropriate risk management arrangements that are in place ▸ The board regularly reviews risks and how they are being managed ▸ The board is aware of its appetite for risk and determines the risk profile for the entity ▸ The board's approach to risk is proportionate and appropriate to its model				
Board members' skills and development						
E14	There should be documented evidence that the board regularly undertakes a skills audit to ensure that it has an appropriate balance of skills and experience	▸ The board regularly undertakes skills audits ▸ The entity has a board which includes a range of skills and backgrounds including commercial, financial, business development, technical, legal and HR experience				

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	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
E15	There should be evidence of ongoing professional training provided to ensure that all board members are up-to-date in their understanding and supported in their roles	▸ Regular training and updates cover legal roles and responsibilities, company directors' roles and companies generally ▸ Directors' training includes responsibilities under the Companies Act 2006, Insolvency Act 1986, Bribery Act 2010, Modern Slavery Act 2015, Data Protection Act 2018 and Health and Safety at Work etc. Act 1974				
The role of executive directors and non-executive directors						
E16	There is evidence that the role of executive directors is clearly defined and documented	▸ Executive directors' roles are clearly defined and documented ▸ Directors' roles are focused on running the entity's business activities and implementing the board's plans and policies				
E17	Non-executive directors are in place to bring an independent judgement to bear on issues of subject matter expertise, strategy, performance, resources including key appointments, and standards of conduct	▸ Non-executive directors: ▪ challenge, and contribute to the development of the company's strategy ▪ scrutinise performance of management in meeting agreed goals and monitor reporting of performance ▪ satisfy themselves on the accuracy of financial information and that financial controls and risk management are robust and defensible ▪ determine executive directors' remuneration and prime role in appointing/removing senior management				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
E18	There is documented evidence that the board values the role of non-executive directors, and their views are influential in the board's decisions	The board values its non-executive directors, so that they are able to demonstrate: ▪ sound judgement and an enquiring mind ▪ knowledge of the business, its operating environment, and issues it faces ▪ integrity, probity, and high ethical standards ▪ objectivity as the basis for questioning and challenging accepted thinking of executives ▪ strong interpersonal skills				
The role of the board chair						
E19	There is evidence that the chair provides clear board leadership, supporting the directors and chief executive and taking account of the shareholders views	The chair is primarily responsible for: ▪ the workings of the board ▪ its balance of membership subject to board and shareholders' approval ▪ ensuring that all relevant issues are on the agenda ▪ ensuring that all directors, executive and non-executive alike, are enabled and encouraged to play their full part in its activities The chair is able to stand sufficiently back from the day-to-day running of the business to ensure their board is in full control of the company's affairs The chair is responsible for: ▪ formulating the board's strategy ▪ promoting the efficient and effective use of staff and other resources ▪ delivering high standards in terms of integrity and propriety				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
Financial management						
E20	There should be a fully documented and approved business plan that is consistent with and no more than 12 months older than the previous business plan. The changes within the updated business plan should accord with the trajectories that are apparent from monthly financial and non-financial performance reports	‣ The business plan and business planning process are critical parts of the governance culture and environment				
E21	The financial transactions and values attributable to the company within the council's medium term financial plan should agree with the projections in the business plan	‣ The business plan provides the basis for monitoring financial performance and feeds into the medium-term financial planning of the council in situations where it expects to receive dividends, loan repayments, capital receipts or provide financial support in terms of working capital or longer-term finance				
E22	Board reports should include clear presentation of the monthly income and expenditure position of the company as well as a cash flow statement and balance sheet	‣ Board reports feature clear articulation of the current financial position of the company in terms of its trading position (income and expenditure), liquidity (cash flow) and solvency (balance sheet)				

	Evidence	What should you be able to find?	What evidence have you found?	RAG rating	Actions recommended	Responsible person/body
E23	There should be evidence of an annual audit letter from the council's external auditors, confirming the degree of confidence they hold in respect of consolidation or treatment of financial instruments entered by the company	▸ The council's external auditor has provided an annual audit letter annually ▸ The annual audit letter confirms the degree of confidence they hold in respect of consolidation or treatment of financial instruments entered by the company				
E24	Documented financial policies and procedures should be available	▸ The company has an independent financial status from the council, including separate bank accounts and designated signatories ▸ The financial transactions of the company are recorded on the company's own, separate ledger system and the council is able to demonstrate how the results of the company are consolidated into its own group accounts ▸ The company has a set of documented financial policies and procedures which describe areas such as borrowing and overdraft limits and levels which are reserved for council approval				
E25	There should be evidence of an effective annual internal audit programme	▸ The company operates a system of internal controls that are consistent with financial policies and procedures ▸ The company's internal controls are subject to periodic testing by internal auditors				

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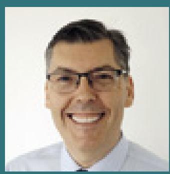

Sean Hanson Chief Executive
07771 838817 | sean.hanson@localpartnerships.gov.uk

David Crowe Strategic Director
07795 418 305 | david.crowe@localpartnerships.gov.uk

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JOINTLY OWNED BY

HM Treasury

Local Government Association

Llywodraeth Cymru Welsh Government

Local Partnerships 18 Smith Square, London SW1P 3HZ

020 7187 7379

LPenquiries@localpartnerships.gov.uk
@LP_localgov | @local-partnerships | localpartnerships.org.uk

EVIDENCE	WHAT SHOULD BE FOUND	CURRENT ARRANGEMENTS (WHAT EVIDENCE HAS BEEN FOUND)	Rag RATING	RECOMMENDED ACTION	RESPONSIBLE PERSON/BODY
GOVERNANCE AIMS					
C1 There should be evidence that the council and senior management recognise the importance of establishing appropriate and proportionate governance arrangements for the oversight of entities	• The Council has sufficient control to ensure that its investment is protected, appropriate returns on investment can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the council. • "Teckal" companies can demonstrate compliance with relevant exemption requirements under EU procurement law.				
C2 There should be evidence of a culture of challenge and clarity relating to the purpose, efficiency, effectiveness, specific objectives and freedoms of the entity.	• There is a culture of challenge • There is a clarity of purpose • The entity has clear objectives • The entity has sufficient freedoms to achieve its objectives				
THE COUNCIL'S SHAREHOLDER ROLE					
C3A clearly designated shareholder role or function which is both understood and recognised by the	• The Council has a designated shareholder "role" to represent its ownership of the entity • The shareholder provides oversight of any decisions taken by the entity				

Council and the entity (and documented in terms of reference)	• Provides a regular review of whether the entity provides the most effective vehicle to deliver the outcomes it requires and whether there are suitable alternatives				
C4 There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting changes made as the entity has developed, in a shareholder's agreement (or set out in the company's AoA).	• The Council has sufficient control to ensure that its investment is protected, appropriate returns on investment can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the council. • "Teckal" companies can demonstrate compliance with relevant exemption requirements under EU procurement law.				
C5 There should be evidence that the individual undertaking the shareholder role is provided with suitable training and support commensurate to the role	• There is a culture of challenge • There is a clarity of purpose • The entity has clear objectives • The entity has sufficient freedoms to achieve its objectives				
C6 Evidence of formal periodic shareholder/Chair/CEO meeting with effective supporting papers to inform subsequent company board meetings	• The shareholder has a mechanism to communicate its views to the entity • Periodical and effective shareholder/chair/CEO meetings are documented				

COUNCIL 0VERSIGHT SCRUTINY AND GOVERNANCE FRAMEWORK					
C7 There should be documented evidence of transparent member and officer scrutiny oversight and approval of business plans.	• There is a clearly defined governance framework underpinned by clear governance principles • The role of the shareholder is separate from the Board • The business plan is current and updated at least annually • The business plan is challenged and monitored by the Board				
C8 There should be evidence of a clear set of KPIs that fall out of the business planning process.	• The council regularly undertakes an objective assessment of how successfully each entity supports its policies and strategies • KPIs are relevant to 'SMARTER' goals • KPIs are reported and monitored within the context of the governance framework				
C9 There should be evidence that senior company staff are performance managed against KPIs	• Board, committee, chair, and director performance is evaluated annually, including against agreed KPIs				
C10 There should be evidence of ongoing assessment of value-for-money and quality offered by the entity through an adequately	• Regular reviews take account of value-for-money and performance quality				

resourced monitoring function					
C11 There should be ongoing assessment of risks relating to the entity, supported by processes to ensure that risks are managed as part of the council's overall risk management approach, with appropriate escalation and reporting	• The council regularly reviews risks relating to its entities and establishes whether they are effectively managed and scrutinised • The council's overview and scrutiny committee (or equivalent) provides overview, pre-decision scrutiny and call-in decisions in relation to the entity				
C12 There should be evidence of a consistent approach across the council when it comes to engaging with its entities	• All council entities are managed in a consistent way with appropriate support, guidance and controls				
C13 The council should have clear and unfettered access to audited accounts for its entities	• The council's audit committee pays specific attention to accounts and audit reports • The council's internal auditors are able to gain clear and transparent access to financial information and oversight of internal controls				
BUSINESS CASE FOR THE ENTITY					
C14 A business case which assessed the risk involved in establishing the entity and	• There is a clear and comprehensive business case that recommended the creation of the entity				

recommended its establishment, taking account of other potential delivery models, should be available to review	• The business case took account of alternative delivery methods, which the case for the entity's creation having clear benefits over other methods				
C15 Objectives of the entity should be clearly defined and documented, and regularly reviewed to ensure that its operation continues to support council policy and strategy, including periodically reviewing the business case to ensure it is still valid	• The objectives of the entity are clearly articulated, defined and documented • The objectives are regularly reviewed • The objectives continue to reflect council policy and strategy • The business case and objectives are regularly reviewed to ensure that they are still valid				
AGREEMENTS WITH THE ENTITY					
C16 Agreements should be documented between the council and the entity for any support or services provided by either party to the other party	• The council and entity have clear and documented agreements for aby services or support provided by either party to the other party • There us a clear process for escalation if the support or services agreements are not performed to either party's satisfaction				
C17 All agreements should be clear, up-to-date, and regularly monitored and reviewed,	• Agreements for support or services between the parties are up-to-date and regularly monitored and reviewed				

with any changed to agreements documented so that a clear audit trail exists	• Changes to agreements are documented with a clear audit trail				
AVOIDING AND MANAGING CONFLICTS OF INTEREST					
C18 - A culture exists whereby actual or potential conflicts of intertest are identified, declared and acted upon including evidence of appropriate training across the organisation	• All parties have been trained and demonstrate a commitment to avoiding and monitoring actual or potential conflicts of interest				
C19 – The council should have clear and up-to-date policies and processes to consistently manage actual conflicts or potential conflicts of interest, including a clear process for investigations and procedures for appropriate disciplinary actions in the event of breaches	• There is a clear conflict of interest policy which is managed actively • There is a clear process for investigating and dealing with breaches of the conflicts of interest policy • Internal and external auditors review the management of conflicts of interest and escalate any concerns to the Monitoring Officer				
C20 – The roles, responsibilities and reporting lines of officers and members who are involved in council oversight of the entities,	• Officers and members make themselves available to scrutiny and other council governance forums				

the provision of services between the entities or the running of the entities should be clearly defined and documented					
COUNCIL APPOINTMENTS TO THE BOARD					
C21There should be evidence that appointments to the board are subject to a documented formal, rigorous, and transparent procedure based on merit and published objective criteria which also promote diversity	• Appointments to the Board are relevant to the post or office of the Council • Council appointed directors cease to be members if they leave their qualifying roles • Appointments are based on a review of the skills, qualifications , diversity, and other attributes required for the role • Where a board member is eligible for renewal and reappointment, this is subject to considering their performance to date and skills, and the needs of the Board.				
ARTICLES OF ASSOCIATION					
E1 The entity's articles of association should be clear, up-to-date, and reflective of how the entity is run	• The entity has articles of association, documenting its constitution • The articles address the entity's purpose, conduct of meetings and role and appointment of directors				

	• If the entity is a Teckal company, the articles demonstrate that the council exercises control				
BUSINESS PLANNING					
E2 There should be evidence of an up-to-date business plan that is reflective of the current circumstances and environment in which the entity operates	• There is an up-to-date business plan, setting out the organisation's objectives and how there will be resourced and achieved • Requirements to meet the legal criteria in relation to any Teckal companies are reflected in the business plan				
ROLE AND BEHAVIOUR OF THE BOARD					
E3 There should be evidence that the board meets regularly to consider, review and record discussions and conclusions	• The board meets regularly, and all decisions are recorded and documented • Decisions are taken at the appropriate place, including deferral and recommendations of decisions on matters that are reserved for the shareholder				
E4 There should be evidence of delivery of strategies and plans, including scrutinising key operational and finance performance information	• The board has delegated detailed scrutiny to committees or directors with appropriate skills, including financial management • The board challenges performance and key financial and operational reporting				

E5 There should be evidence of the desired culture and behaviours	• The board promotes the success of the company • The board provides entrepreneurial leadership • Prudent and effective controls are demonstrated where risk is assessed and managed • The board sets strategic aims and ensures sufficient resources (financial and human) are available to meet objectives • The board reviews management performance, including that of the CEO/MD and leadership team • The board sets corporate values and standards • The board ensures obligations to shareholders and others are met				
E6 The company structures should be regularly scrutinised in order to ensure they remain fit for purpose	• The company structures are regularly reviewed • Financial and performance benchmarking exercises are carried				
E7 There should be evidence that the board has clear policies and procedures for its members to ensure that actual or potential conflicts of interests are identified, declared, and acted upon	• The board regularly monitors conflicts of interest, including with suppliers and users				

ROLE AND BEHAVIOURS OF COMPANY DIRECTORS					
E8 – Directors have sufficient skills and experience to run the entity	• Directors' skills align well to the organisations purpose and objectives • Directors are trained so that they are competent in undertaking their roles and responsibilities				
E9 – directors' behaviours are aligned with the requirements of the Companies Act 2006 and the Nolan Principles as well as Cabinet Officer's Code of Conduct for Board Members of Public Bodies.	Directors: • Act within their powers • Promote the success of the company • Exercise independent judgement • Exercise reasonable care skill and diligence • Avoids conflicts of interest • Do not accept benefits from third parties • Declare an interest in proposed transactions or arrangements with the company				
E10 The scope of Directors' authorities should be documented and clear to all parties	• Directors' authorities are demonstrated in a scheme of delegation • The scheme of delegation includes reference to matters which are reserved for the board and cannot be delegated				
COMPANY BOARD COMPOSITION					

E11 the board has a diverse membership with the collective skills and attributes needed to lead the entity effectively	• There are between 5 and 10 directors on the Board • At least half of the directors are independent non-executives • Appointments to the board are subject to a formal rigorous and transparent selection procedure based on merit and published objective criteria				
E12 – that the board membership is reviewed regularly for composition and fitness for purpose	• Board composition and individual director performance is reviewed periodically to evaluate board composition, the effectiveness of individual contribution and how effectively board members work together to achieve the objective of the entity				
THE BOARD AND RISK MANAGEMENT					
E13 – there should be evidence that board membership is reviewed regularly for composition and fitness for purpose	• The board demonstrates ultimate responsibility for risk management within the entity and ensures that appropriate risk management arrangements that are in place • The board regularly reviews risks and how they are being managed • The board is aware of its appetite for risk and determines the risk profile for the entity				

	• The board's approach to risk is proportionate and appropriate to its model				
E14 - the board regularly undertakes a skills audit to ensure that it has an appropriate balance of skills and experience	• The board regularly undertakes skills audits • The entity has a board which include a range of skills and backgrounds including commercial, financial, business development, technical, legal and HR experience				
E15 – there should be evidence of ongoing professional training provided to ensure that all board members are up-to-date in their understanding and supported in their roles	• Regular training and updates cover legal roles and responsibilities, company directors' roles and companies generally • Directors' training includes responsibilities under the Companies Act 2006, Insolvency Act 1986, Bribery Act 2010, Modern Slavery Act 2015, Data Protection Act 2018 and Health and Safety at Work etc. Act 1974				
THE ROLE OF EXECUTIVE DIRECTORS AND NON-EXECUTIVE DIRECORS					
E16 - the role of executive directors in clearly defined and documented	• Executive roles are clearly defined and documented • Directors' roles are focussed on running the entity's business activities and implementing the board's plans and policies				
E17 - non-executive directors are in place to bring an independent	• Challenge and contribute to the development of the company's strategy				

judgement to bear on issues of subject matter expertise; strategy, performance, resources including key appointments and standards of conduct – non-executive directors	• Scrutinise performance of management in meeting agreed goals and monitor reporting of performance. • Satisfy themselves on the accuracy of financial information and that the financial controls and risk management ore defensible • Determine executive directors' remuneration and prime role in appointing and removing senior management				
E18 – There is documented evidence that the board values the role of non-executive directors, and their views are influential in the board's decisions	The board values its non-executive directors, so that they are able to demonstrate:				
THE ROLE OF THE BOARD CHAIR					
E19 – There is evidence that the chair provides clear board leadership, supporting the directors and chief executive and taking account of the shareholders views	The chair is primarily responsible for: • The workings of the board • Its balance of membership subject to board the shareholders' approval • Ensuring that all relevant issues are on the agenda • Ensuring that all directors, executive and non-executive alike, are enables and encouraged to play their full part in its activities				

	The chair is able to stand sufficiently back from day-to-day running of the business to ensure their board is in full control of the company's affairs The chair is responsible for: • Formulating the board's strategy • Promoting the efficient and effective use of staff and other resources • Delivering high standards in terms of integrity and propriety				
FINANCIAL MANAGEMENT					
E20 – There should be a fully documented and approved business plan that is consistent with and no more than 12 months older than the previous business plan. The changes within the updated business plan should accord with the trajectories that are apparent from monthly financial and non-financial performance reports	• The business plan and business planning process are critical parts of the governance culture and environment				
E21 – The financial transactions and values attributable to the company within the council's medium term	• The business plan provide4s the basis for monitoring financial performance and feeds into the medium-term financial planning of the council in situations where it expects to receive				

financial plan should agree with the projections in the business plan	dividends, loan repayments, capital receipts or provide financial support in terms of working capital or longer-term finance				
E22 – Board reports should include clear presentation of the monthly income and expenditure position of the company as well as a cash flow statement and balance sheet	• Board reports feature clear articulation of the current financial position of the company in terms of its trading position (income and expenditure), liquidity (cash flow) and solvency (balance sheet)				
E23 – There should be evidence of an annual audit letter form the council's external auditors, confirming the degree of confidence they hold in resect of consolidation or treatment of financial instruments entered by the company	• The council's external auditor has provided an annual audit letter annually • The annual audit letter confirms the degree of confidence they hold in respect of consolidation or treatment of financial instruments entered by the company				
E24 – Documented financial policies and procedures should be available	• The company has an independent financial stuts from the council, including separate bank accounts and designated signatories • The financial transactions of the company are recorded on the company's own, separate ledger system and the council is able to demonstrate how the results of the				

	company are consolidated into its own group accounts • The company has a set of documented financial policies and procedures which describe areas such as borrowing and overdraft limits and levels which are reserved for council approval				
E25 – There should be evidence of an effective annual internal audit programme	• The company operates a system of internal controls that are consistent with financial policies and procedures • The company's internal controls are subject to periodic testing by internal auditors				

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