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# NOTICE OF MEETING

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## CABINET

**THURSDAY, 26 MARCH 2020 AT 9.15 AM**

## **EXECUTIVE MEETING ROOM - THE GUILDHALL**

Telephone enquiries to Joanne Wildsmith, Democratic Services Tel 9283 4057  
Email: [democratic@portsmouthcc.gov.uk](mailto:democratic@portsmouthcc.gov.uk)

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

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## **Membership**

Councillor Gerald Vernon-Jackson CBE (Chair)  
Councillor Steve Pitt (Vice-Chair)  
Councillor Dave Ashmore  
Councillor Lynne Stagg  
Councillor Suzy Horton  
Councillor Matthew Winnington  
Councillor Lee Hunt  
Councillor Tom Wood  
Councillor Darren Sanders

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(NB This Agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the contact officer (above) by 12 noon of the working day before the meeting, and must include the purpose of the deputation (for example, for or against the recommendations). Email requests are accepted.**

## **AGENDA**

- 1 Apologies for Absence**
- 2 Declarations of Interests**
- 3 LGBT+ Champion appointment (Pages 7 - 8)**

At the full Council meeting on 15 November 2019 a motion on Inclusive Relationships Education was presented by Cllr Suzy Horton and passed by the full council. This motion included a resolution to ask cabinet to appoint an elected Member LGBT+ children and young people's champion.(Details of the duties of this role is attached.)

The champion role was open to all members as outlined in the MIS item that went on 7th February (attached). Expressions of interest were received from 4 members, Cllr Suzy Horton, Cllr Chris Atwell, Cllr Claire Udy and Cllr George Fielding.

The members met with young people from the 4U group, Portsmouth Pride Youth Society and Miltoncross School Diversity group on 28th February (unfortunately Cllr Fielding was unable to attend). Each member gave a short introduction to themselves. This was followed by some informal discussions with the young people in small groups and then some well-considered questions were posed from the floor to each of the members in turn. The young people were really impressed by all the members and there was some debate about whether they could do the role jointly or whether was important to have one named overall Champion.

The young people gave a very clear message that they welcomed the support from all of those who had expressed an interest. They wanted all of these members to work together to champion LGBT+ young people but a majority selected Cllr Claire Udy as their overall Champion.

This item is to seek the endorsement of Cabinet in accepting the choice of the young people who were present.

**RECOMMENDATION: to appoint Cllr Claire Udy as Portsmouth's LGBT+ Children and Young People's Champion and to ask Cllr Udy to undertake this role with support and input from Cllrs Suzy Horton, Chris Atwell and George Fielding.**

**4 Preparations and Planning for Covid 19 in Portsmouth (information item)**

The Cabinet Member for Health, Wellbeing & Social Care has asked for an urgent item to be brought to the meeting on the current situation and this will therefore be **to follow and is likely to be presented on the day of the meeting.**

**5 Waste disposal infrastructure and future collections (Pages 9 - 14)**

The information report by the Director of Housing, Neighbourhoods and Building Services, is to update the Cabinet on the future of waste collections and disposal infrastructure, and the Project Integra partnership.

**6 Renewable Energy and Energy Efficiency (Pages 15 - 18)**

The information report by the Director of Housing, Neighbourhood and Building Services is to update the Cabinet as to the ongoing work to make the Council's non-domestic building portfolio more energy efficient and implementing renewable energy technologies where appropriate.

**7 Leamington House and Horatia House - Update and next steps (Pages 19 - 38)**

The joint report by the Director of Regeneration & Director of Housing, Neighbourhood and Building Services seeks to give a progress report on the decisions and actions agreed in October 2019. Also to report back on the key strands of work associated with the decommissioning and deconstruction

(demolition) feasibility of Leamington House and Horatia House. This also provides Cabinet with a summary of the findings from the deconstruction surveys, as carried out to date and to confirm the preferred way forward, which is now the basis of the tender process being undertaken by officers. The report contains updates on the tender processes and other critical path work being undertaken in line with previous cabinet decisions taken.

**RECOMMENDED that Cabinet:**

**(1) Notes the proposed method, programme and budget cost of the deconstruction works and associated master planning exercise.**

**(2) Delegates authority to the Director of Regeneration in consultation with the Director of Housing, Neighbourhood and Building Services to run the procurement for the appropriate contractors to carry out the deconstruction work.**

**(3) Notes the further discussions with Homes England.**

**8 Strategic Partnership agreement HIVE Portsmouth & Portsmouth City Council**

A report by the Director of Culture, Leisure and Regulatory Services **will follow**. The purpose of the report is to outline to Cabinet the proposal of a strategic partnership agreement between the HIVE Portsmouth and Portsmouth City Council.

**9 Exclusion of Press and Public**

**“That, under the provisions of Section 100A of the Local Government Act, 1972 as amended by the Local Government (Access to Information) Act, 1985, the press and public be excluded for the consideration of the following item on the grounds that the report(s) contain information defined as exempt in Part 1 of Schedule 12A to the Local Government Act, 1972”.**

**The public interest in maintaining the exemption must outweigh the public interest in disclosing the information.**

**Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012, regulation 5, the reasons for exemption of the listed item is shown below.**

**Members of the public may make representation as to why the item should be held in open session. A statement of the Council’s response to representations received will be given at the meeting so that this can be taken into account when members decide whether or not to deal with the item under exempt business.**

**(NB The exempt/confidential committee papers on the agenda will contain information which is commercially, legally or personally sensitive and should not be divulged to third parties. Members are reminded of standing order restrictions on the disclosure of exempt information and are invited to return their exempt documentation to the Local Democracy Officer at the conclusion of the meeting for shredding.)**

**Item** **Paragraph**

**Company Directors (appendix A only, legal advice)** **5\***

**(paragraph 5 - information in respect of which a claim to legal privilege could be maintained in legal proceedings)**

**10 Board Composition of Portsmouth City Council companies (Pages 39 - 92)**

The report by the City Solicitor (with exempt appendix A) sets out the basis upon which it is necessary and prudent to structure the Ravelin Group of companies. The basis for this is to provide an appropriate vehicle to enable company activity to occur that is efficient, legally accountable and transparent. The need to structure as suggested is to enable PCC to trade and generate profit beyond merely covering the initial cost of the activity.

**RECOMMENDED that:**

**(1) The City Solicitor prepares and drafts a protocol (drawn from best practice and expert advice - attached at Appendix A and Appendix D) approved by the Governance and Audit Committee as a reference and guide for the overall corporate governance structure (i.e. company structure and board composition) relating to PCC owned companies and incorporated within the PCC's constitution.**

**(2) In accordance with the protocol at Appendix A, that the following be approved in respect of the Ravelin Group companies:**

**(i) A shareholder committee is established and is responsible for the oversight of the Ravelin Group companies and all other future company subsidiaries (where relevant).**

**(ii) The Ravelin Group Shareholder Committee and draft terms of reference set out in detail in Appendix B are approved.**

**(iii) Following the approval of the establishment of the Ravelin Group shareholder committee the previous delegations as contained within the cabinet decision meeting dated 26 February 2019 shall cease and the shareholder committee shall become the sole body exercising the shareholder functions of Ravelin Group companies.**

**(iv) Any amendments to finalise the corporate structure of the Ravelin Group and all relevant subsidiaries required to maximise the tax efficiency of the Ravelin Group and any other PCC companies is delegated to the City Solicitor in consultation with the Leader of the Council and the S.151 Officer.**

Members of the public are permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting nor records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

Whilst every effort will be made to webcast this meeting, should technical or other difficulties occur, the meeting will continue without being webcast via the Council's website.

This meeting is webcast (videoed), viewable via the Council's livestream account at <https://livestream.com/accounts/14063785>

19 March 2020

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# Agenda Item 3

## **LGBT+ Champion- supplementary information for cabinet.**

As previously advised, Young People outlined the role as:

- Working directly with schools, CAMHS and other organisations to create more inclusive environments around the city
- Meeting with LGBT+ young people regularly to hear their thoughts and views
- Working to ensure the voice and opinions of LGBT+ young people are heard

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In terms of the activities and what this might look like in practice:

Cllr Udy, as LGBT+ Champion, working in partnership with Cllrs Atwell and Horton will:

- 1. Work directly with schools, CAMHS and other organisations to create more inclusive environments around the city**
  - Offer to go into schools (by invitation from the school and according to school needs) to:
    - speak at an assembly
    - meet with the school's diversity group
    - show support by attending events such as equality or anti-bullying events
  - Link with other organisations and within existing forums such as CAMHS participation groups and Dynamite help services to become more inclusive.
- 2. Meet with LGBT+ young people regularly to hear their thoughts and views**
  - Use existing forums to meet and engage with LGBT+ young people, such as 4U, Portsmouth Pride Youth Society and School/ College Diversity Groups. Work alongside the staff leading these groups to listen to young people and feedback any actions taken as a result of these discussions.
  - Signpost young people to services and support groups
  - Through the work above, raise awareness with LGBT+ young people that there is Champion supported by other elected members who are advocating for them.
- 3. Work to ensure the voice and opinions of LGBT+ young people are heard**
  - Hold LGBT+ young people in mind during decision making process and raise issues of concern to them in meeting and discussions
  - Liaise with officers to ensure the view of LGBT+ young people contribute to service design and delivery through existing forums and mechanisms including through coproduction
  - Encourage LGBT+ young people, through the activities above, to play an active role in civic life and to understand the role and responsibilities of the council

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# Agenda Item 5

## THIS ITEM IS FOR INFORMATION ONLY

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Portsmouth  
CITY COUNCIL

**Title of meeting:** Full Cabinet

**Subject:** Waste Disposal Infrastructure and future of collections

**Date of meeting:** 26 March 2020

**Report by:** James Hill, Director of Housing, Neighbourhoods and Building Services

**Wards affected:** All

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1. **Requested by** Cllr Gerald Vernon-Jackson, Leader of the Council

2. **Purpose** To update the cabinet on the future of waste collections and disposal infrastructure, and the Project Integra partnership.

### 3. Information Requested

3.1. **Background** - As a Unitary authority, Portsmouth is responsible for both waste collections and waste disposal. Portsmouth is in a joint contract for waste disposal with Hampshire County Council (HCC) and Southampton City Council (SCC). The waste disposal authorities have made provision for waste disposal facilities across the County. This includes three Energy Recovery Facilities (ERFs), two Material Recovery Facilities (MRFs), a network of 26 Household Waste and Recycling Centres (HWRCs), two composting sites, along with a number of waste transfer stations. The infrastructure is jointly owned by PCC, HCC and SCC.

3.2. **Environment Bill** - The Government is currently progressing the Environment Bill through Parliament. This bill establishes a number of changes to waste services. These include:

- Consistent collections (for materials - recycling and separate food waste, frequency etc)
- Deposit Return Scheme (DRS)
- Extended producer responsibility (EPR)

Consistent Collections - All local authorities will be required to collect the same materials. This is likely to include:

- (a) glass;
- (b) metal;

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- (c) plastic;
  - (d) paper and card;
  - (e) food waste;
  - (f) garden waste.
- (Recyclable household waste (a) to (d) may not be collected together with recyclable household waste within (e) or (f).)

Deposit Return Scheme - A deposit return scheme is being considered and could apply to glass bottles, plastic bottles, steel and aluminium cans.

Extended Producer Responsibility (EPR) is expected to be the mechanism by which funding is provided for additional burdens - services not currently provided - although it is anticipated that this will be linked to compliance with consistent collections, and improved performance.

This means that we need to consider the provision of waste infrastructure to deliver these requirements.

The current MRF provision will not meet the requirement to collect fibres (paper/cardboard) separately from other materials.

We also need to consider provision of disposal infrastructure for food waste.

### **3.3. Infrastructure**

**3.3.1. MRF provision** - The current MRF provision means that we can only collect paper/card, cans/tins, plastic bottles, and aerosols in the kerbside recycling. This will not meet the requirements to collect paper/card separately from other materials. Retrofitting of the existing MRF infrastructure is not possible. Options are being explored which include a 'twin stream' MRF. This would mean that we would collect recycling differently to the current system providing 2 separate containers for:

- Paper/card
- Plastics, Aerosols, tins/cans, cartons, glass

A twin stream MRF would be an alternative to the previously proposed Single MRF which is not viable and will not meet the requirements of the Environment bill. The proposed new twin stream MRF would also be able to process a wider range of materials, so it is proposed that pots, tubs and trays (PTT), cartons and glass will be collected at the kerbside to meet the requirements of the Environment Bill.

**3.3.2.** HCC are working with the contractor on a proposal for a twin stream MRF at an HCC owned site.

**3.3.3. Anaerobic Digestion Provision** - A requirement of the Environment Bill is to provide separate food waste collections. Food waste is processed at an Anaerobic Digestion Plant (AD) and is recycled into digestate and biogas. Currently, only

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Eastleigh have a food waste collection service although Portsmouth is trialling food waste collections with further trials planned for the Autumn. PCC is working towards the ambitious target of a City wide rollout from October 2021. An information report was presented to Cabinet on 19 March 2020.

**3.3.4.** The disposal authorities have not provided anaerobic digestion facilities and currently food waste is hauled to a plant in Hurn, Bournemouth. There is limited AD provision in Hampshire and Portsmouth is currently working on a business case for AD provision. This work will consider a provision for all local authorities in Hampshire.

### **3.4. Collection**

**3.4.1.** The Waste Collection Contract is due to end on 30 September 2021. Consideration is currently being given to the re-provision of this service. It is an aim of the Council to roll out food waste collections from 1 October 2021 onwards and the end date of the contract needs to be considered in relation to the other changes that are upcoming.

**3.4.2.** Vehicle procurement will have a considerable lead time and there are a number of options to explore regarding vehicles which will be dependent on the disposal infrastructure, collection vehicle depot size and infrastructure at the depot.

**3.4.3.** Additionally with the city council declaring a climate emergency in March 2019 there could be an opportunity to consider procurement of a 'greener' vehicle fleet that could make a difference to the city in terms of air quality.

### **3.5. The future of Project Integra**

Project Integra consists of the 13 Hampshire district, county and unitary councils and the waste disposal contractor Veolia Environmental Services. As a partnership it works to provide an integrated approach to waste disposal in Hampshire.

It is fair to say that delivering improvements to waste services has stalled and there are some challenging issues that impact on working together.

Additionally, the partnership is underpinned by a memorandum of understanding (MOU) between the County and the Districts which sets out how a number of financial mechanisms will operate. HCC have recently given notice to the districts that they will end the MOU on 31 March 2021.

From 1 April 2021, HCC will:

- No longer pay the districts income from recycling (circa £3.5million)
- Recharge the districts for contamination costs

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There has been some work done to come up with an alternative model for the districts.

(NB: this does not impact PCC/SCC directly- as Unitaries, we are disposal and collection authorities and pay our own contamination costs and retain recycling income. Therefore, we are already incentivised to reduce contamination)

HCC, the districts and UAs have been meeting for a couple of years to discuss how all could work together to improve waste management in Hampshire. It is recognised that since the delivery of the waste infrastructure, there has been limited change/progression to waste services.

As a unitary authority, PCC is able to make changes to the collection system that can impact on what is going into the disposal system. All of these costs and impacts are under the control of PCC.

As a party to the waste disposal contract, the future of PI, and the relationship between the County and the districts is still of interest and could impact on PCC as it could impact on the disposal infrastructure.

#### **4. Timelines**

There are a number of pieces of work currently underway, contract end dates, and legislative change that will impact upon the final future of waste collections and disposal infrastructure, these are;

- AD business case
- Twin stream MRF business case
- Collection service modelling and business case
- New waste collection contract
- Enacting of the Environment Bill

Over the coming months, the business cases should be complete, and we should have a clearer idea of when and how the legislative changes from the Environment Bill will impact on waste management services.

.....  
Signed by (Director)

#### **Appendices:**

**Background list of documents: Section 100D of the Local Government Act 1972**

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**Portsmouth**  
**CITY COUNCIL**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>

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# Agenda Item 6

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Portsmouth  
CITY COUNCIL

**Title of meeting:** Full Cabinet

**Subject:** Renewable Energy and Energy Efficiency

**Date of meeting:** 26<sup>th</sup> March 2020

**Report by:** James Hill, Director of Housing, Neighbourhood and Building Services

**Wards affected:** All

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1. **Requested by** Councillor Gerald Vernon-Jackson, Leader of the Council

2. **Purpose** To update the Cabinet as to the ongoing work to make the Council's non-domestic building portfolio more energy efficient and implementing renewable energy technologies where appropriate

### 3. Background

3.1 Portsmouth City Council's (the 'Council') energy services team is responsible for a number of key services related to the provision of energy across the Council's estate; broadly including:

- Delivery of the Council's capital projects related to renewable energy technologies and energy efficiency
- Procurement, management and compliance related to energy, water and carbon
- Acting in a consultancy capacity for clients internal and external to the Council

3.2 In recent years the role of low and zero carbon generation and energy efficiency has been an important focus the Council; helping to lower energy bills, create a sustainable income, which can be used for essential services, and lower carbon emissions. This paper sets out some of the key achievements and statistics relating to this work.

3.3 Work over recent years has laid a foundation on which a greater scale and scope of projects can be delivered. This paper sets out some of the key work being undertaken now and in future related to energy services.

3.4 The energy services team also leads work in the city around domestic energy efficiency. That work, was included within the publication of the Council's *Home Energy and Water Strategy* at the 10<sup>th</sup> March 2020 Cabinet.

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#### **4. Recent and Current Projects**

4.1 Over recent years, the Council has directly invested in, and installed, around 400 solar PV systems (consisting approximately 26,000 panels). These owned and operated solar systems generate around £850,000 income and savings each year for the Council; offsetting over 1,600 tonnes of CO<sub>2</sub>e per annum. The total generating capacity of this solar is 6 mega-watts (MW); enough to provide power for more than 1,500 typical homes each year.

4.2 The Council's achievements around solar and other energy services have received regional and national recognition. Over the past two years, the Council has twice won 'Council of the Year' at the regional Energy Efficiency Awards; as well as national recognition through awards and publications. The success of the Council's solar programme has been a key contributor to this recognition.

4.3 This recognition, has in part, led to the energy services team being appointed in a consultancy role to project manage the delivery of solar projects for external clients, where they are making their own investments in the technology. Investments by neighbouring local authorities and other clients, delivered through the Council's energy services team, has totalled nearly £5 million. In the case of West Sussex County Council, this has included installation of solar across 80 schools.

4.4 Battery storage is a new technology which creates a benefit by capturing solar-generated power and storing it for use during times of peak power demand. This ensures that as larger proportion as possible of a building's energy consumption comes from zero-carbon generation. The potential for the Council to invest heavily in batteries, as the capital cost of the technology falls further, has been recognised. The technology is now being piloted across 15 sites with existing solar arrays within the Council's building portfolio. Additionally, batteries are now being specified alongside new solar PV systems as a matter of course.

4.5 The Council has invested heavily in energy-efficient LED lighting in key buildings, such as the Civic Offices, Central Library and Isambard Brunel Carpark. The collective energy savings in these buildings amounts to £130,000 per year; saving 254 tonnes of CO<sub>2</sub>e.

4.6 Where LED lighting has been employed across the street lighting portfolio it has made an estimated 54% energy usage reduction; approximately £690,000 will be saved per annum; alongside carbon savings of 1,273 tonnes of CO<sub>2</sub>e per year.

#### **5. Future Projects**

5.1 Over £5 million of capital funding is available specifically for energy efficiency and low-carbon generation investments. As such, the Council appraises potential projects as and when they arise. The following are key projects to be carried out



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over the next twelve months, showing a range of technologies employed. These should not be seen as an exhaustive list.

5.2 Projects being brought forward in the new financial year include the installation of solar at Hilsea Industrial Estate, Oakdene House and Wilmcote House. Between them, the projects will save around £30,000 in electricity costs and 105 tonnes CO<sub>2</sub>e. Battery storage located alongside these systems, will help to increase the energy savings further.

5.3 A range of ambitious energy projects are being considered, and feasibility studies being undertaken, at the newly acquired Lakeside site; including roof-mounted and car-port solar panels, electric vehicle charging infrastructure, upgraded transformers and combined heat and power (CHP) to efficiently provide heating and cooling. As many as 6,000 solar panels could be installed at the site, subject to feasibility.

5.4 Portsmouth International Port has made large strides towards lower energy as part of its plans to become the UK's first zero emissions port; installing LED lighting, EV charging points and 200 solar panels. In order to increase the energy and carbon savings further, plans are underway to increase the solar PV capacity to up to 1MW (around 4,000 extra panels); along with additional feasibility work being undertaken to assess the colocation of battery storage and upgrading the site's transformers.

5.5 Although in the early stages; the potential to develop a solar farm on Council owned land at Dunsbury Park is currently being explored.

5.6 The energy services team is increasing the scale and scope of the work it does with external clients. A significant project is being delivered to support Brighton and Hove City Council's solar PV rollout; with discussions with further peer local authorities ongoing.

5.7 CHP is to be delivered at the Mountbatten Centre in the early part of the new financial year; to provide heating to the building and to help offset the high electricity demand of the building.

5.8 A range of new lighting projects including offices, schools and housing sites is being brought forward. Savings have been identified through audit and survey; with a budget secured to deliver energy savings of around £250,000 per annum.

.....  
Signed by  
**James Hill - Director of Housing, Neighbourhood and Building Services**

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**Appendices:**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

# Agenda Item 7

<b>Title of meeting:</b>	Cabinet Meeting
<b>Date of meeting:</b>	26 March 2020
<b>Subject:</b>	<b><u>Leamington House and Horatia House - Update and Next Steps</u></b>
<b>Report by:</b>	Director of Regeneration & Director of Housing, Neighbourhood and Building Services
<b>Wards affected:</b>	St Thomas Ward
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Purpose of report

- 1.1. To provide Cabinet with a progress update on the decisions and actions agreed in October 2019 report.
- 1.2. To report back on the key strands of work associated with the decommissioning and deconstruction (demolition) feasibility of Leamington House and Horatia House.
- 1.3. To report back to Cabinet with a summary of the findings from the deconstruction surveys, as carried out to date and to confirm the preferred way forward, which is now the basis of the tender process being undertaken by officers.
- 1.4. The report contains updates on the tender processes and other critical path work being undertaken in line with previous cabinet decisions taken.

## 2. Recommendations

- 2.1. That the Cabinet:
  - 2.1.1 Notes the proposed method, programme and budget cost of the deconstruction works and associated master planning exercise.
  - 2.1.2 Delegates authority to the Director of Regeneration in consultation with the Director of Housing, Neighbourhood and Building Services to run the

procurement for the appropriate contractors to carry out the deconstruction work.

2.1.3 Notes the further discussions with Homes England.

### **3. Background**

#### **3.1 Cabinet Decision 26<sup>th</sup> February 2019**

3.1.1 Cabinet agreed on the 26<sup>th</sup> February 2019 that it is financially unviable to undertake the works to strengthen, clad and install sprinklers into Leamington House and Horatia House, and as a result agreed that on completion of the permanent rehousing of all households from Leamington House and Horatia House, the two blocks will be removed from charge, decommissioned and secured.

3.1.2 Cabinet further agreed to give delegated approval to the Director of Housing, Neighbourhood and Building Services authority to incur costs to carry out decommissioning works of Leamington House and Horatia House and secure both blocks.

3.1.3 Cabinet agreed that there is an opportunity for the sites to be redeveloped to create affordable/social housing and regeneration in this area of the City and requests the Regeneration Directorate working with the Housing Directorate to provide a report to Cabinet with an options appraisal for the demolition of Leamington House and Horatia House and redevelopment of the sites in consultation with the local and wider Somers town community and stakeholders.

3.1.4 Cabinet noted the loss of social housing units to the Housing Revenue Account and requests that the options appraisal for the development of the Leamington House and Horatia House sites includes the re-provision of a minimum of 272 social housing units to be held in the HRA.

#### **3.2 Cabinet Decision 8<sup>th</sup> October 2019**

3.2.1 Cabinet was appraise of the results of the resident engagement exercise and agreed to use all the engagement feedback results as the basis of the design brief for the master planning work and adopt the seven key principles emerging from the feedback.

### **4. Update on the Key Work Strands of the Project**

#### **Decommissioning and Securing the Blocks**

4.1 On the 9<sup>th</sup> August 2019 the last household was permanently rehoused from tower blocks. Both blocks are now physically secured with metal screening of all windows up to the third floor, secure gates at each entrance door and have had intruder alarms installed.

- 4.2 The external car park and green space / play park will remain open and in use for as long as practical. Management of the blocks remains with HNB.

Deconstruction update

- 4.3 Ridge & Partners LLP were appointed on the 17<sup>th</sup> July 2019 as principal consultant to provide a detailed options appraisal for the demolition of both blocks.

- 4.3.1 The reports were received in draft, in December 2019 and provide the detail on the method of demolition, timescales and estimated costs. In summary the findings support the proposed deconstruction method whilst giving confirmatory and detailed analysis of the two blocks. A high level summary of the report's findings are detailed below:-

- i) Demolition methodology.

This should be by careful panel by panel deconstruction as each is separated from the structure and craned to the ground for disposal.

- ii) Intrusive structural survey results,

Isolated ceilings and screeds have been removed to expose both the original structure and provide an indication of strengthening works that have taken place.

- iii) Mechanical and electrical surveys, Utility services

Identifies and traces the existing M&E installation district heating connections and other associated feeds around the sites.

- iv) Site access and highways investigations.

Considers the access and egress to the site from the exiting highway and confirms the best routes.

- v) Deconstruction budgets (asbestos removal, soft strip and main contract)

Establishes the likely order of cost subject to a limited soft market testing exercise, noting specialist trades like asbestos surveys are still to follow and finding form deconstruction works of a similar nature.

- vi) Programme.

Whilst the availability and phasing of the two blocks will dictate the overall duration individually the blocks will take 8 to 10 months to deconstruct. This will be subject to agreement with the successful contractor(s).

- 4.4 The reports do note the inherent risk associated with demolition and deconstruction works but goes on to focus on the specific risks around the deconstruction of Large Panel Systems (LPS) buildings and highlights the need for specialist deconstruction experts to mitigate this known risk.
- 4.5 The above documents are being used to inform the Employers Requirements for the procurement exercise being carried out to select an appropriate demolition contractor.

#### Design Team Appointment update

- 4.6 The engagement feedback and the seven key themes/principles will form the basis of the master planning and architectural design brief which will cover the options for the Leamington and Horatia House sites and wider area improvements.
- 4.7 The master planning team will be procured using the Homes England Direct Procurement Panel which offers a multi-disciplinary consultant panel.
- 4.8 The strategy remains as previously reported to appoint an appropriate multi-disciplinary team that could carry the design work through to planning or the appointment could be terminated at any appropriate point.
- 4.9 All of the options developed will be subject to further resident consultation. Officers will then produce a business case demonstrating how the preferred option could comply with the mandate from residents and deliver a viable solution, including a preferred route to market.
- 4.10 The delivery methodology will be directed by a careful consideration of the corporate priorities balanced against the potential risks and rewards applicable to the various development plots and the resources (both physical and financial) available.
- 4.11 A separate report to cabinet would come forward at the end of the master-planning options study following further resident consultation, seeking agreement on the development model and funding to support the development stages.

#### Property Update

- 4.12 Melbourne Place Carpark is a two storey semi underground with the potential for 107 spaces. The carpark, is situated between the two tower blocks and there is currently a 125 year lease in place with Portsmouth University (92 years remaining).
- 4.13 The building is in need of significant repair and currently there are approximately 45 spaces are in use at present.
- 4.14 The Council is working with the University to secure the Melbourne Place Carpark to support the regeneration of the site and it is proposed that a land swap (subject to contract) with the Dorothy Dymond carpark will be entered into.

4.15 Dorothy Dymond Car Park is situated within the City Centre masterplan area, currently designated as a 58 space carpark, identified as a potential development site for a variety of uses, up to six storeys.

4.16 At present the Council and the University of Portsmouth have jointly instructed valuations and Heads of Terms are being shared in draft.

#### Telecoms Update

4.17 The Council has commenced discussion with the two commercial interests with telecoms equipment situated on the roof of both blocks.

4.18 Under the terms of the existing agreements, the first has been terminated and is due to relocate by September 2020.

4.19 The second telecoms operator has a longer term interest and has initially objected to the council's request to vacate and has served a counter notice to protect their interest. They have also commenced preparations to vacate and are actively looking for sites in the area.

## **5. Resident Engagement**

### H& L Engagement

5.1. A commitment has been made to take the master planning options back to a further round of public consultation events in the summer of 2020.

5.2. The resident engagement results were covered in depth in the previous report (October 2019) for reference the key principles that will inform the master planning are below.

5.3. The Seven key themes were noted as:-

1. Build appropriate homes.
2. Make better use of green space and space for children.
3. No more student accommodation.
4. Consider wider area improvements.
5. Better parking options.
6. No tower blocks.
7. Re-provide the social housing lost when the tower blocks go.

5.4 In October 2019 cabinet agreed the communication plan for the publication of the engagement results. All the actions have been completed and have been published on the website.

## **6. Homes England**

- 6.1 Initial meetings with Homes England has suggested that the project could satisfy the funding criteria of the Small Sites Fund. This fund has been set up to address the viability gap on projects preventing them being bought forward, for example investment in infrastructure land remediation and the like. The fund could support the costs of the Horatia and Leamington blocks deconstruction if a future scheme maximises additional housing numbers.
- 6.2 At this stage we have been informed monies granted from the Small Sites Fund have to be spent by March 2022.

## **7. Project Governance**

- 7.1 The project is controlled by a board led by the Regeneration Directorate which includes the Director of HNB and representatives from the key support services.
- 7.2 The projects progress to date was reported through to Governance Audit and Standards Committee and from May 2019 to the cross party Major Projects Board. The reporting to the Major Projects Board will continue.

## **8. Reasons for recommendations**

- 8.1 The gathering of information and various surveys to support the procurement and selection of contracting partners to carry out the deconstruction works packages has been developed to a point where this work can now progress.
- 8.2 Homes England support for the development of the Leamington House and Horatia House sites and the wider area improvements has strengthened and whilst this will be subject to satisfying funding criteria we meet the timescales for the small sites fund (expenditure by March 2022) and provide a credible delivery option for the additional homes they seek.

## **9. Integrated Impact Assessment**

- 9.1 A full integrated impact assessment is appended to this report.

## **10. Legal implications**

- 10.1 The report notes the tenancy terminations and the re-housing of the occupants of the two towers following consultation, is now completed.
- 10.2 The report underscores the level of engagement and consultation relating to the future of the site, which has led to the seven key themes to influence the Council's approach to regeneration. Meaningful regard for consultation will minimalises the potential for legal challenge.



10.3 The report addresses the relevant issues around functional risk associated with demolition, acknowledging the appointment of a principal contractor. The report also details measures to secure the towers while they are vacant, and ongoing negotiations to remove telecommunications equipment from its current position on the site.

10.4 At this stage the future *works* element is yet to be costed - once this is completed and procedure advice can be provided as to the relevant market approach and compliant procurement route in line with the Public Contract regulations 2015 and internal contract procedure rules.

## **11. Director of Finance's comments**

11.1 As mentioned in the main body of the report the Council continue to develop a plan to fulfil the commitments made in the February 2019 Cabinet report.

11.2 In order to redevelop the site where the two towers stand the Council needs to demolish the existing structures. Given their proximity to other buildings the Council needs to employ specialist contractors to provide safe options for completing this work.

11.3 The cost associated with deconstruction of Horatia and Leamington Houses is likely to be in the region of £6m - £12m based on the advice of the specialist contractors and comparable sites visited at Rugby.

11.4 In order for the demolition to commence a source of funding needs to be identified. Officers are working with Homes England to secure funding through their Small Sites fund and while these talks are positive, they are also in the early stages and predicated on the Council having a firm business case on what it hopes to deliver as the level of funding will be linked to the number of units that are being delivered.

11.5 Without a viable business case the Council are unable to use unsupported borrowing in compliance with the Prudential Code, as it cannot be demonstrated at this point that the borrowing is affordable, sustainable and prudent, thus the officer's approach to progress with the design and procurement of key packages to firm up the costs is supported.

11.6 To support the business case, commercial modelling will need to show that the assumptions still meet the mandate provided by residents during the consultation, to deliver 272 social rented units. Early modelling based on the current assumptions indicates that a viable business case is achievable however it would require significant additional grant funding, or some other delivery model.

- 11.7 The Council are currently procuring a design team to lead on a Masterplan for the area, this work is likely to be concluded later in 2020 and will inform the likely design and extent of development on that area. It is at this point that a Business Case can be written that demonstrates financial viability and that can then unlock the Borrowing and Grant funding needed to develop the scheme, and commence the demolition of the blocks.
- 11.8 In the meantime the Council can start to approach the market and carry out a procurement exercise for a demolition contractor, this process will be funded from the Housing Revenue Account Major Repairs Reserve.

.....  
Signed by:  
Director of Regeneration

.....  
Signed by:  
Director of Housing, Neighbourhood and Building Services

**Appendices:**

Appendix 1 - Integrated Impact Assessment

**Background list of documents: Section 100D of the Local Government Act  
1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by

..... on .....

.....

Signed by:  
Leader of the Council

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# Integrated Impact Assessment (IIA)

Integrated impact assessment (IIA) form December 2019

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

The integrated impact assessment is a quick and easy screening process. It should:

- identify those policies, projects, services, functions or strategies that could impact positively or negatively on the following areas:
  - Communities and safety
  - Regeneration and culture
  - Environment and public space
  - Equality & - Diversity - This can be found in Section A5

**Directorate:**

Regeneration

**Service, function:**

Strategic Developments

**Title of policy, service, function, project or strategy (new or old) :**

Deconstruction and redevelopment of Horatia House and Leamington House in Somerstown.

**Type of policy, service, function, project or strategy:**

- Existing
- New / proposed
- Changed

**What is the aim of your policy, service, function, project or strategy?**

Demolish both Horatia House and Leamington House and carry out masterplanning works to redevelop the site. This will include the re-provision of a minimum of 272 homes for social rent.

Has any consultation been undertaken for this proposal? What were the outcomes of the consultations? Has anything changed because of the consultation? Did this inform your proposal?

Engagement with Horatia and Leamington former residents, neighbours, Somerstown residents and businesses, partner organisations, the voluntary and community sector, City-wide residents, local businesses and resident groups within Somerstown took place from 27th September 2019 until 10th October 2019. The results of which were reported to Cabinet on 8th October 2019. Cabinet agreed to use all the engagement feedback results as the basis of the design brief for the master planning work and adopted the seven key principles emerging from the feedback.

## A - Communities and safety

Yes

No

Is your policy/proposal relevant to the following questions?

### A1-Crime - Will it make our city safer?



In thinking about this question:

- How will it reduce crime, disorder, ASB and the fear of crime?
- How will it prevent the misuse of drugs, alcohol and other substances?
- How will it protect and support young people at risk of harm?
- How will it discourage re-offending?

If you want more information contact [Lisa.Wills@portsmouthcc.gov.uk](mailto:Lisa.Wills@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cou-spp-plan-2018-20.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

The blocks are currently empty and unable to be lived in. Whilst currently securely protected and managed by HPS there will be a long term risk until the deconstruction is complete.

How will you measure/check the impact of your proposal?

By ensuring the structures are removed and site kept secure until future development.

## A - Communities and safety

Yes

No

Is your policy/proposal relevant to the following questions?

### A2-Housing - Will it provide good quality homes?



In thinking about this question:

- How will it increase good quality affordable housing, including social housing?
- How will it reduce the number of poor quality homes and accommodation?
- How will it produce well-insulated and sustainable buildings?
- How will it provide a mix of housing for different groups and needs?

If you want more information contact [Daniel.Young@portsmouthcc.gov.uk](mailto:Daniel.Young@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/psh-providing-affordable-housing-in-portsmouth-april-19.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

The redevelopment will as a minimum replace the 272 social homes with modern efficient dwelling built to and possibly surpassing current building regs

How are you going to measure/check the impact of your proposal?

The reprovision of housing will include for measurable energy efficiencies and sustainable standards.

**A - Communities and safety**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**A3-Health** - Will this help promote healthy, safe and independent living?



In thinking about this question:

- How will it improve physical and mental health?
- How will it improve quality of life?
- How will it encourage healthy lifestyle choices?
- How will it create healthy places? (Including workplaces)

If you want more information contact [Dominique.Letouze@portsmouthcc.gov.uk](mailto:Dominique.Letouze@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cons-114.86-health-and-wellbeing-strategy-proof-2.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

There will inevitable be some short term disruption to the area along with noise and dust whilst the deconstruction and any associated redevelopment takes place. The long term aspiration is for a better living environment good quality housing and public realm.

How are you going to measure/check the impact of your proposal?

Short term air quality monitoring will be in place to minimise the impact along with travel plans and all reasonable measures to control both the deconstruction and redevelopment.

**A - Communities and safety**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**A4-Income deprivation and poverty**-Will it consider income deprivation and reduce poverty?



In thinking about this question:

- How will it support those vulnerable to falling into poverty; e.g., single working age adults and lone parent households?
- How will it consider low-income communities, households and individuals?
- How will it support those unable to work?
- How will it support those with no educational qualifications?

If you want more information contact [Mark.Sage@portsmouthcc.gov.uk](mailto:Mark.Sage@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cou-homelessness-strategy-2018-to-2023.pdf>  
<https://www.portsmouth.gov.uk/ext/health-and-care/health/joint-strategic-needs-assessment>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

The redevelopment will provide an additional 272 homes as a minimum and whilst tenure and rental levels are to be decided upon it is within the control of the authority to make those decisions.

How are you going to measure/check the impact of your proposal?  
By reduction in the waiting list.

**A - Communities and safety**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**A5-Equality & diversity** - Will it have any positive/negative impacts on the protected characteristics?



In thinking about this question:

- How will it impact on the protected characteristics-Positive or negative impact (Protected characteristics under the Equality Act 2010, Age, disability, race/ethnicity, Sexual orientation, gender reassignment, sex, religion or belief, pregnancy and maternity, marriage and civil partnership,socio-economic)
- What mitigation has been put in place to lessen any impacts or barriers removed?
- How will it help promote equality for a specific protected characteristic?

If you want more information contact [gina.perryman@portsmouthcc.gov.uk](mailto:gina.perryman@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cmu-equality-strategy-2019-22-final.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

Deconstruction and redevelopment will create employment and training opportunities.

How are you going to measure/check the impact of your proposal?  
Those contracted will be required to present an employment and training plan and that can form part of the procurement.



**B - Environment and climate change**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**B1-Carbon emissions** - Will it reduce carbon emissions?



In thinking about this question:

- How will it reduce greenhouse gas emissions?
- How will it provide renewable sources of energy?
- How will it reduce the need for motorised vehicle travel?
- How will it encourage and support residents to reduce carbon emissions?

If you want more information contact [Tristan.thorn@portsmouthcc.gov.uk](mailto:Tristan.thorn@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cmu-sustainability-strategy.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

New properties will be more efficient in terms of heating, lighting ,water consumption and embedded energy.

How are you going to measure/check the impact of your proposal?

Energy Performance certificates will be required and the reduced carbon footprint can be measured.

**B - Environment and climate change**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**B2-Energy use** - Will it reduce energy use?



In thinking about this question:

- How will it reduce water consumption?
- How will it reduce electricity consumption?
- How will it reduce gas consumption?
- How will it reduce the production of waste?

If you want more information contact [Triston.thorn@portsmouthcc.gov.uk](mailto:Triston.thorn@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/pln-portsmouth-plan-post-adoption.pdf>

<https://democracy.portsmouth.gov.uk/documents/s24685/Home%20Energy%20Appendix%201%20-%20Energy%20and%20water%20at%20home%20-%20Strategy%202019-25.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

Any new properties will be required to be more efficient in terms of heating, lighting ,water consumption and embedded energy than existing properties.

How are you going to measure/check the impact of your proposal?

Energy Performance certificates will be required and the reduced carbon footprint can be measured.

## B - Environment and climate change

Yes

No

Is your policy/proposal relevant to the following questions?

**B3 - Climate change mitigation and flooding**-Will it proactively mitigate against a changing climate and flooding?



In thinking about this question:

- How will it minimise flood risk from both coastal and surface flooding in the future?
- How will it protect properties and buildings from flooding?
- How will it make local people aware of the risk from flooding?
- How will it mitigate for future changes in temperature and extreme weather events?

If you want more information contact [Tristan.thorn@portsmouthcc.gov.uk](mailto:Tristan.thorn@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/env-surface-water-management-plan-2019.pdf>

<https://www.portsmouth.gov.uk/ext/documents-external/cou-flood-risk-management-plan.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

Any new development could involve sustainable urban drainage (SUDS) designs and will be required to consider the available drainage capacity and its impact upon it.

How are you going to measure/check the impact of your proposal?  
The design will quantify any impact.

## B - Environment and climate change

Yes

No

Is your policy/proposal relevant to the following questions?

**B4-Natural environment**-Will it ensure public spaces are greener, more sustainable and well-maintained?



In thinking about this question:

- How will it encourage biodiversity and protect habitats?
- How will it preserve natural sites?
- How will it conserve and enhance natural species?

If you want more information contact [Daniel.Young@portsmouthcc.gov.uk](mailto:Daniel.Young@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/pln-solent-recreation-mitigation-strategy-dec-17.pdf>

<https://www.portsmouth.gov.uk/ext/documents-external/pln-portsmouth-plan-post-adoption.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

Public consultation has identified improved green spaces and one of the residents primary concerns. Whilst the need for housing needs to be considered against this principal the design will need to address this issue.

How are you going to measure/check the impact of your proposal?

Measures to accommodate biodiversity can be built into the design (bat boxes for example)

**B - Environment and climate change**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**B5-Air quality** - Will it improve air quality?



In thinking about this question:

- How will it reduce motor vehicle traffic congestion?
- How will it reduce emissions of key pollutants?
- How will it discourage the idling of motor vehicles?
- How will it reduce reliance on private car use?

If you want more information contact [Hayley.Trower@portsmouthcc.gov.uk](mailto:Hayley.Trower@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/env-aq-air-quality-plan-outline-business-case.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

There will be an increase in heavy vehicle movements during deconstruction and redevelopment. The provision of parking spaces can be limited by policy and the introduction of sustainable transport measures, cycle lanes bus stop and the like.

How are you going to measure/check the impact of your proposal?  
Air quality testing during the construction cycle.

**B - Environment and climate change**

**Yes**

**No**

Is your policy/proposal relevant to the following questions?

**B6-Transport** - Will it improve road safety and transport for the whole community?



In thinking about this question:

- How will it prioritise pedestrians, cyclists and public transport users over users of private vehicles?
- How will it allocate street space to ensure children and older people can walk and cycle safely in the area?
- How will it increase the proportion of journeys made using sustainable and active transport?
- How will it reduce the risk of traffic collisions, and near misses, with pedestrians and cyclists?

If you want more information contact [Pam.Turton@portsmouthcc.gov.uk](mailto:Pam.Turton@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/travel/local-transport-plan-3>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

The redevelopment will improve cycle usage and encourage sustainable and active travel.

How are you going to measure/check the impact of your proposal?  
Measurement (counts) of cycle/walking journeys can be made. By comparison of the exiting and new cycle parking bays, routes, bus lanes and the like.

## B - Environment and climate change

Yes

No

Is your policy/proposal relevant to the following questions?

**B7-Waste management** - Will it increase recycling and reduce the production of waste?



In thinking about this question:

- How will it reduce household waste and consumption?
- How will it increase recycling?
- How will it reduce industrial and construction waste?

If you want more information contact [Steven.Russell@portsmouthcc.gov.uk](mailto:Steven.Russell@portsmouthcc.gov.uk) or go to:

<https://documents.hants.gov.uk/mineralsandwaste/HampshireMineralsWastePlanADOPTED.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

Household waste recycling facilities will be provided encouraging sorting and recycling  
Construction waste will be subject to a Site Waste Management Plan which will form part of the procurement criteria.

How are you going to measure/check the impact of your proposal?

Site waste will be recorded and reported on, domestic waste collection can also be measured.

C - Regeneration of our city

Yes

No

Is your policy/proposal relevant to the following questions?

**C1-Culture and heritage** - Will it promote, protect and enhance our culture and heritage?



In thinking about this question:

- How will it protect areas of cultural value?
- How will it protect listed buildings?
- How will it encourage events and attractions?
- How will it make Portsmouth a city people want to live in?

If you want more information contact [Claire.Looney@portsmouthcc.gov.uk](mailto:Claire.Looney@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/pln-portsmouth-plan-post-adoption.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

There is a high demand for all types of housing across the city. Modern efficient homes will make Portsmouth a more attractive place to live.

How are you going to measure/check the impact of your proposal?

Public consultation.

C - Regeneration of our city

Yes

No

Is your policy/proposal relevant to the following questions?

**C2-Employment and opportunities** - Will it promote the development of a skilled workforce?



In thinking about this question:

- How will it improve qualifications and skills for local people?
- How will it reduce unemployment?
- How will it create high quality jobs?
- How will it improve earnings?

If you want more information contact [Mark.Pembleton@portsmouthcc.gov.uk](mailto:Mark.Pembleton@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cou-regeneration-strategy.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

The deconstruction and redevelopment will require apprenticeships and training plans from the contractors.

How are you going to measure/check the impact of your proposal?

We will report the number of apprenticeships/locally employed people that the development creates.

Is your policy/proposal relevant to the following questions?

**C3 - Economy** - Will it encourage businesses to invest in the city, support sustainable growth and regeneration?



In thinking about this question:

- How will it encourage the development of key industries?
- How will it improve the local economy?
- How will it create valuable employment opportunities for local people?
- How will it promote employment and growth in the city?

If you want more information contact [Mark.Pembleton@portsmouthcc.gov.uk](mailto:Mark.Pembleton@portsmouthcc.gov.uk) or go to:

<https://www.portsmouth.gov.uk/ext/documents-external/cou-regeneration-strategy.pdf>

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?

A significant measurable proportion of the construction investment will be employment and a proportion of that will be local.

How are you going to measure/check the impact of your proposal?  
The procurement process will test the contractors employment record

**Q8 - Who was involved in the Integrated impact assessment?**

Kevin Hudson

This IIA has been approved by: Tristan Samuels

Contact number: 023 9283 4450

Date:



<b>Title of meeting:</b>	Cabinet
<b>Date of meeting:</b>	26 March 2020
<b>Subject:</b>	Board Composition of Portsmouth City Council companies
<b>Report by:</b>	City Solicitor
<b>Wards affected:</b>	All
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Purpose

- 1.1 This report sets out the basis upon which it is necessary and prudent to structure the Ravelin Group of companies. The basis for this is to provide an appropriate vehicle to enable company activity to occur that is efficient, legally accountable and transparent. The need to structure as suggested is to enable PCC to trade and generate profit beyond merely covering the initial cost of the activity.
- 1.2 Given the general power of competence under the Localism Act is not an absolute it is to be remembered that the ability to charge and or trade are constrained by sections 3 and 4 to the extent that the default position is to correctly structure a trading arm with this in mind.
- 1.3 Given that the position is that to trade effectively structures within a company construct need to be created the paper sets out below in detail the obligations and responsibilities of the Directors, Members and Officers in a liability and behaviour sense as if they are acting outside the PCC environment.
- 1.4 It is to be noted that the structuring suggested is aimed at protecting those involved and enabling onlookers to be satisfied that such companies as PCC have are being commercially run and effectively governed by the relevant elected Members involved.
- 1.5 The purpose of this report is to provide Members with advice on the board composition of companies to which Portsmouth City Council ("PCC") is the sole shareholder and in particular to approve the necessary constitutional internal decision making structures in terms of exercising the PCC shareholder function going forward.
- 1.6 To activate the dormant Ravelin Group of companies which were set up following a Council decision on 12 April 2016.

- 1.7 To draw from best practice guidance and expert external legal advice in terms of local authority companies generally as well as the legal responsibilities of company directors whilst seeking to operate in a collaborative and transparent manner.
- 1.8 Make recommendations on the governance structure of the Ravelin Group to enable the subsidiary companies to begin trading as well as providing advice relevant to all companies under the control of PCC so that Members may wish to decide (in light of the advice and recent experience) whether a protocol is to be developed to ensure consistency in the future management of PCC controlled companies by way of a shareholder committee structure.
- 1.9 This report sets out options in terms of PCC owned company director board membership composition, taking the following into account:-
- i. The expert external legal advice sought<sup>1</sup>;
  - ii. Best practice generally
  - iii. The legal responsibilities of company directors as set out in statute and at common law;
  - iv. Potential conflicts of risk - members; and
  - v. Potential conflicts of risk - statutory officer.
  - vi. The membership of any board when PCC are seeking to rely on a particular legal exception pursuant to the Public Contract Regulations 2015 ("PCR's"); and
  - vii. The desire to work in a uniform, collaboratively and transparent manner across PCC as a whole.

## 2. Recommendations

- 2.1 It is recommended that:
- 2.2 The City Solicitor prepares and drafts a protocol (drawn from best practice and expert advice - attached at Appendix A and Appendix D) approved by the Governance and Audit Committee as a reference and guide for the overall corporate governance structure (i.e. company structure and board composition) relating to PCC owned companies and incorporated within the PCC's constitution.
- 2.3 In accordance with the protocol at Appendix A, that the following be approved in respect of the Ravelin Group companies:
- 2.4 A shareholder committee is established and is responsible for the oversight of the Ravelin Group companies and all other future company subsidiaries (where relevant):-
- 2.5 The Ravelin Group Shareholder Committee and draft terms of reference set out in detail in Appendix B are approved.

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<sup>1</sup> Bevan Brittan - Board Composition advice at appendix A



2.6 Following the approval of the establishment of the Ravelin Group shareholder committee the previous delegations as contained within the cabinet decision meeting dated 26 February 2019 shall cease and the shareholder committee shall become the sole body exercising the shareholder functions of Ravelin Group companies.

2.7 Any amendments to finalise the corporate structure of the Ravelin Group and all relevant subsidiaries required to maximise the tax efficiency of the Ravelin Group and any other PCC companies is delegated to the City Solicitor in consultation with the Leader of the Council and the S.151 Officer.

### **3. Background**

3.1. The Board composition of the companies owned and controlled by PCC has been comprehensively reviewed and considered in the context of :-

- (i) best practice (including advantages and disadvantages of appropriately experienced external directors on such board(s) in the Local Authority context);
- (ii) external legal advice in relation to potential conflicts of interest; and
- (iii) legal duties enshrined by common law and statute required of company directors hold.

3.2. PCC is currently the sole shareholder/wholly owns the following companies:

- Ravelin Property Limited;
- Ravelin Group Limited.
- Portico Shipping Limited;
- Victory Energy Supply Limited.

3.3. Following the Ravelin Group cabinet report dated 26 February 2018 a review of the current structure of Ravelin Group Limited ("Ravelin Group") and Ravelin Property Limited ("Ravelin Property") was carried out. The current board membership is set out below for reference.

#### **Ravelin Hold Co**

Tristan Samuels  
Wayne Layton  
Julian Pike

#### **Ravelin Property**

Tristan Samuels  
Tom Southall  
Julian Pike

3.4. It will be noted that when these companies were initially incorporated they included statutory officers and Members of the then administration.

### **4. The Shareholder**

4.1. The shareholders are the owners of any company. In all current cases PCC is the sole shareholder of PCC owned companies. In relation to Ravelin, PCC is the sole shareholder of Ravelin Hold Co which in turn, is the sole shareholder of Ravelin Property and potentially any further subsidiaries.

- 4.2. Shareholders control a company through the appointment and removal of directors and certain statutory rights. In addition, shareholders may exercise control in accordance with rights given to them either in the articles or a separate contract with the company: "a shareholder's agreement".
- 4.3. The shareholder's agreement will put mechanisms in place to provide PCC with strategic control over the operation of the company through the right to approve a business plan and the requirement that certain listed decisions - "reserved matters". Reserved matters are those which are referred back to PCC and are not within the ability of the directors to decide upon. Whether or not the company is to be structured as a Teckal company or not (see section 10 below above) will have an impact on the reserved matters.
- 4.4. An example set of reserved matters which seek to ensure that control of the company is reserved to PCC as Shareholder are found within schedule 1 of the Bevan Brittan advice<sup>2</sup>. For example:-
- i. The removal of any directors (including any terms on which such directors are removed from their office as directors) other than Council appointed directors;
  - ii. Adopting or amending the Business Plan of each respective Company and any in-year changes; and
  - iii. Agreeing or approving any other material services to be provided by the Company to a third party the total value of which the Board reasonably expects will exceed £100,000 [value used for example purchases only].
- 4.5. There are a number of ways upon which PCC can exercise the shareholder function. The premise is about the strategic control over the companies' activities and therefore the legal advice concludes it is usual for this function to be exercised by the Members of PCC. Depending on the level of control retained under the shareholder's agreement this could be through all shareholder decisions:-
- 4.5.1. going to Cabinet;
  - 4.5.2. **a committee of Cabinet (shareholder committee) being established to undertake some or all decisions (see point 5 below), or,**
  - 4.5.3. certain decisions being delegated to certain Members (e.g. portfolio holder) and / or senior officers.

Note - It could well be that the structure of the governance of any PCC company is a mixture of all three - noting that PCC (acting as shareholder) can delegate any decision making as per the above.

## 5. Shareholder Committee.

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<sup>2</sup>Bevan Brittan - Board Composition advice - appendix A - schedule 1

- 5.1. The Cabinet has authority to undertake shareholder functions of Ravelin Hold Co and to supervise and approve any substantial matters of any subsidiary company. There is a need to ensure that decision making is both flexible and conducted in a timely manner whilst noting the need to conflict of interest issues.
- 5.2. The proposed governance structure for the Ravelin Group of companies is contained within appendix B. This sees a proposal of a new shareholder committee being established. This model could be equally applied to other PCC owned companies.
- 5.3. The shareholder committee shall consist of a majority from the Administration and 1 Member from all other parties, drawn from the elected Members of the Council. Subject to below, other Members of the Council (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed Member of the Shareholder Committee is unable to attend.
- 5.4. As the role of the Shareholder Committee is to advise and discharge executive functions in relation to company matters and to exercise the role of the Shareholder Representative, only Cabinet members can be members of the Shareholder Committee with voting rights, although other Cabinet members and non-Cabinet members can be invited to attend, without voting rights along with 1 member from each opposition group who shall be invited to attend who will not have voting rights.
- 5.5. The Leader will be the chairman of the Shareholder Committee and will have the casting vote in the event that a majority decision cannot be reached. A Vice Chair will be selected from the elected members of the Shareholder Committee.
- 5.6. The necessary quorum for the meeting will be no less than 3 elected and vote rights bearing Cabinet Members of the Council present.
- 5.7. Meetings
  - 5.7.1 The Shareholder Committee will meet as regularly as required to ensure proper exercise of its functions but not less than quarterly.
  - 5.7.2 The members of the Shareholder Committee may invite the Chief Executive, Section 151 Officer, City Solicitor, Officer of the Council or their deputies and any other persons as required who will be the advisors to the Shareholder Committee.
  - 5.7.3 It is anticipated that the directors of companies will be invited if their input is required to make an informed decision.
- 5.8. Administration
  - 5.8.1 The agenda of the meeting together with any supporting documentation will be provided to members of the Shareholder Committee at least 5 working days in advance. This notice period may be waived if the Chair of the Shareholder Committee so agrees.

5.8.2 The meetings of the Shareholder Committee will be minuted which will subsequently be approved at the next meeting.

5.9 It is proposed that following the approval of the establishment of the shareholder committee, the structure of Ravelin Group shall look as described in appendix B:

If approved, the role of the shareholder committee shall be as detailed in the terms of reference (appendix B) and summarised below:-

- Exercise shareholder function of Ravelin Group companies;
- Approve or reject business plans of Ravelin Group Companies;
- Monitor performance and financial delivery against business plans;
- Exercise decision making over Reserved Matters;
- Approve or reject appointment of directors.

## **6. The role of a director.**

6.1. The role of the director does have some limitations placed upon it, as appointed directors will be in control of the operation and management of a company subject to the control of PCC acting as shareholder (as prescribed by the shareholders agreement) (see: shareholder at section 4 above).

6.2. Many of the duties of directors were not prescribed by statute but rather, have evolved through the courts and have become established in the body of case law. Including (but not limited to):-

- i. fundamental duty of all directors and those acting in a fiduciary capacity to act honestly and in good faith and in the best interests of the company and its members as a whole; and
- ii. a duty to exercise a reasonable degree of skill and care in any dealings between the company and third parties.

6.3. The companies Act 2006 codified such director's duties and sets out a statutory statement of duties - this is detailed at section 8 below. It should be noted that this is not a comprehensive list of duties and does not covers all duties that a director may owe to a company.

## **Size and composition.**

6.4. There is no set size or composition of a board of any local authority owned company. The company purpose will affect the structure, including whether the entity is to be a 'Teckal' company or not (see section 10 below). The issues PCC should consider in respect of the board composition of each company include (but are not limited to):

- i. the appropriate mix of skills and experience required;
- ii. the extent to which any board will be made up of executive or non-executive members. Executive being those who are employees of the company, and non-executive being those not employed, being either officers or members from PCC and / or independent directors;
- iii. the required mix of skills and experience required;
- iv. the need to demonstrate sufficient control when required for a Teckal company (see section 10 below) independence if required to achieve non-contracting authority status).
- v. the potential conflicts which could hinder the effective operation of the board or present issues for individuals when acting within PCC.
- vi. The purpose and commerciality of the company. The membership of the board will need to comprise and to speak well with the market of the particular speciality (housing development etc.) to ensure fluidity in terms of responding to market needs.

6.4.1. The key terms of the letter(s) of appointment of directors, such terms will include:-

- i. The availability of the director - noting the requirements for frequent board meetings in the early trading phases; and
- ii. The need for flexibility in terms of last minute board meeting requirements in cases of emergency decisions during the early incorporation phase.

- 6.5. The Bevan Brittan advice note <sup>3</sup> sets out the key considerations which should be taken into account when looking at the relevant skills and experience of the board (see section 6 of appendix A). This should be reviewed on a case by case basis for any newly created company noting the objective and functions of the company.
- 6.6. The relevant skills and experience of each individual director needs to be reviewed against the company aims, purpose and functions (pursuant to the business case). Bevan Brittan provide the example of: "***if the property company is concerned with implementation of development projects the board should have individuals with skills and experience relevant to that function***".
- 6.7. In accordance with best practice, there should be a mechanism by which independent people selected through open recruitment should be considered for membership on any PCC owned company board on the basis of the specific skills, expertise and experience.

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<sup>3</sup> Bevan Brittan - Board Composition advice - appendix A

## 7. Local Authority Companies - structures - best practice guidance.

- 7.1. Deemed as "*one of the notoriously difficult areas of law*"<sup>4</sup> is the issue of members and officers being tasked with decision making requiring the disclosure of interests in other external organisations (companies). This is apparent with issues arising out of a conflict of interest when persons are involved in a dual capacity - i.e. a member and/or statutory officer who is also a director.
- 7.2. Members and officers who are appointed to act for external companies must keep at the forefront of their minds that they will owe fiduciary duties to both PCC and any relevant other company. When acting for PCC - acting in the best interests of the Council, council taxpayers and the wider public interest. Equally if acting as a director of a company as an officer and/or member ensuring they are acting in the best interests of the company, meaning their shareholders, their employees and their creditors.
- 7.3. In January 2016, the Cabinet Office published *Guidance for Directors of Companies Fully or Partly owned by the Public Sector* attached at appendix C. This is a helpful note which highlighted the law<sup>5</sup> regarding directors liabilities in terms of conflict and indemnity.
- 7.4. Following on from this *the Code of Practice (committee structure and officer example) developed by The Lawyers in Local Government Group* (attached at appendix D - ("the Code")) was drafted to assist local authorities to work their way through difficult issues arising when setting up a wholly and/or party owned company.
- 7.5. The Code sets out a detailed best practice approach to the practical implications of how a Council as a (shareholder) member of a company might make decisions relating to that company through a separate **Council shareholder committee** providing oversight from a shareholder's perspective of the company's business and take relevant decisions on "*reserved matters*". - see section 4.4 above.
- 7.6. The best practice guidance confirms (note the below in italics is taken directly from the guidance provided within Appendix D):-

*The structure [described above] creates a governance process whereby, so far as appropriate under this Code's principles, the company is left to get on with its business. Following the UK Corporate Governance Code, the companies will utilise a unified board, with appropriate non-executive directors providing outside expert help and with board committees (such as an audit committee) to provide oversight and ensure delivery.*

*The Leader, in turn, will seek to inform the executive decisions and to hold the company to account by utilising a reflection of the company board structure in the form of a Shareholder Committee, including external expertise and sub-groups. The*

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<sup>4</sup> Local authority Companies and Partnerships - practical handbook - Robert Hann

<sup>5</sup> s.117 Companies Act 2006

*role of this group is to provide the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the executive as the shareholder has established for the company are being adhered to. **In it, the Leader (or his or her appointee) remains the decision maker but the shareholder committee act as advisors in the making of those executive decisions.***

*Such a Shareholder Committee is considered to be an effective means of governance of the companies. This is because it allows for decision making and discussion in an informed atmosphere, which also provides the executive with:*

- *a mechanism to communicate the shareholders' views to the company; and*
- *a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives.*

*It is intended that the Leader (or his/her appointee) will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Committee (in a similar manner to the Leader's executive decisions made at various partnership boards and the health and well-being board).*

*It is envisaged that key decisions concerning the companies will, however, still normally be made at meetings of the Cabinet.*

## 8. Members.

As advised by Bevan Brittan, whilst members can be directors of PCC owned companies, this can create conflict issues for members relating to:

- the Code of Conduct for Members; and
- the risk of decisions made by Members who are also directors of the company being challenged on the basis of bias or predetermination or bias.

8.1. Directors who are Members must disclose any potential conflicts of interests and observe the requirements of the Code of Conduct of PCC<sup>6</sup> and a clear audit trail of this is necessary. Members acting as directors need to bear in mind (when undertaking their PCC role) to behave in ways which avoid any suggestion of bias or predetermination.

8.2. Whilst the Monitoring Officer ("MO") is potentially able (in limited and prescribed circumstances) to grant a dispensation which covers disclosable pecuniary interests<sup>7</sup> this does not avoid always the potential of accusations of bias or predetermination.

8.3. It is difficult in practical terms for the member to deal with a matter and it lays both the member and PCC open to allegations of bias and potential challenge.

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<sup>6</sup> Localism Act 2011

<sup>7</sup> Localism Act 2011

8.4. Directors owe duties and are personally liable to a company (under both statute<sup>8</sup> and at common law - for example in relation to confidentiality). These duties are to:-

- Act within powers <sup>9</sup>
- Promote the success of the company<sup>10</sup>;
- Exercise independent judgement <sup>11</sup>;
- Exercise reasonable skill, care and diligence<sup>12</sup>
- Avoid conflicts of interest <sup>13</sup>;
- Not to accept benefits from third parties;<sup>14</sup> and
- Declare interest in a proposed transaction or arrangement with the company<sup>15</sup>.

8.5. Members acting as directors may be faced with regular conflicts in relation to the above duties, in particular the duties to promote the success of the company, to exercise independent judgement, and to avoid conflicts of interest.

## 9. Officers.

9.1. The Bevan Brittan advice<sup>16</sup> does conclude that it is generally easier to manage the conflicts for an "officer director" than for a Member as requirements around conflicts are usually contained in the contract of employment or implied at common law. As such, this is a key area that PCC must consider in terms of reviewing employment terms as well as the letter of appointment for directors. PCC can agree to (i) officers continuing to act despite potential conflicts; (ii) agree not to take action against them where they are required to act contrary to the interests of PCC due to their role as director; and (iii) agree to their remuneration as a director.

9.2. The conflict issue is still very apparent however, and there is a risk that officers who are also directors of PCC companies may (if they are involved in making decisions about the company wearing their PCC officer hat) be open to challenge that their decision is influenced by bias and/or by pre-determination (that they have made their mind up because of the company role and are not making the decision objectively and fairly).

9.3. The Bevan Brittan advice<sup>17</sup> concludes that the risk is best mitigated by PCC **not putting Council officers who are responsible for material decisions relating to a company as directors of the company.** Furthermore it concludes and **advises against statutory officers (monitoring officer, s.151 officer and the Head of Paid Service) being appointed as directors as they may be required to undertake their statutory roles in relation to the company at some point which would raise difficult conflicts.** Subject to the objects of the company, this could in the future be extended to other 'statutory' directors such as Director of Children's

<sup>8</sup> The majority consolidated within the Companies Act 2006 ("CA 2006")

<sup>9</sup> s.171 CA 2006

<sup>10</sup> s.172 CA 2006

<sup>11</sup> s.173 CA 2006

<sup>12</sup> s.174 CA 2006

<sup>13</sup> s.175 CA 2006

<sup>14</sup> s.176 CA 2006

<sup>15</sup> s.177 CA 2006

<sup>16</sup> Bevan Brittan - Board Composition advice - appendix A

<sup>17</sup> Bevan Brittan - Board Composition advice - appendix A



Services, Director of Adult Services and Director of Public Health being directors of relevant companies.

- 9.4. It should be noted that PCC (acting as shareholder) has the greater degree of control and it is key to note the shareholders role to fully make any decision as to membership of any PCC company board.

## **10. Teckal.**

10.1. The "Teckal" (named after the legal case) exemption allows for PCC to structure a company in such a way so that contracts can be awarded without a tender under the Public Contract Regulations ("PCRs")<sup>18</sup> (i) by PCC to said company (ii) by said company to PCC and (iii) by one company to another. PCC may potentially be able to rely on this exemption if contracting with any of the companies in a way that might otherwise trigger an obligation to run a compliant procurement - i.e. a direct award. The PCR's prescribe a number of conditions which must be met in order for the company to benefit from the exemption, including:-

- PCC must exercises a degree of control which is similar to that which it exercises over its own departments (the control limb);
- 80% of the activities of the company are entrusted to it by PCC (the activities limb); and
- where there is no private participation in its capital.

10.2. If PCC wishes to use the Teckal exemption then the governance framework will need to be designed and implemented to ensure compliance with the "control" limb of the test, this will be prescribed within the shareholders agreement and include:-

- right to appoint and remove specified number of board directors;
- sign off a periodic business plan – this may be an annual plan or a multi-year plan updated on a rolling basis; and
- exercise control over key decisions through the requirement for unanimous approval of certain reserved matters.

## **11. Integrated Impact Assessment.**

11.1. The contents of this report do not have any relevant equalities impact and therefore an Integrated Impact Assessment is not required.

## **12. Legal implications**

12.1. The City Solicitor's comments are contained within this report.

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<sup>18</sup> Regulation 12(1) Public Contract Regulations 2015

**13. Director of Finance's comments**

13.1. There are no additional financial implications expected to arise from the recommendations contained within this report.

.....  
Signed by:

**Appendices:**

- Appendix A- Bevan Brittan - Board Composition Advice
- Appendix B - Ravelin Group Shareholder Committee and draft terms of reference
- Appendix C - published Guidance for Directors of Companies Fully or Partly owned by the Public Sector
- Appendix D - Code of Practice (committee structure and officer example) developed by The Lawyers in Local Government Group

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by  
..... on .....

.....  
Signed by:

**Ravelin Group Shareholder committee****TERMS OF REFERENCE****1. Purpose of the Shareholder Committee**

1.1. The purpose of the Shareholder Committee is to exercise the shareholder functions of the Council for Ravelin Group companies and provide the strategic oversight and guidance and to represent the Council as Shareholder Representative at meetings with the companies.

1.2. In particular, the Shareholder Committee will be responsible for:

- 1.2.1. Incorporating and winding down of any Ravelin Group companies, including constitutional matters such as:-
  - 1.2.1.1. Varying Articles of Association;
  - 1.2.1.2. Changing the names of companies and registered addresses;
- 1.2.2. Approving Shareholders Agreements;
- 1.2.3. Approving the annual Business Plans of the companies;
- 1.2.4. Approving any action which is inconsistent with the approved Business Plan;
- 1.2.5. Monitoring performance of the companies against the approved Business Plans;
- 1.2.6. In consultation with Section 151 Officer, approving any investment of funds together with any terms of loan agreement to Ravelin Group companies;
- 1.2.7. Appointing and dismissing of directors;
- 1.2.8. Approving major business transactions;
- 1.2.9. Approving the issuing or reduction of share capital;
- 1.2.10. Approving the appointing of the auditors; and
- 1.2.11. Approving any other matter which is defined as the Reserved Matter in Shareholders Agreements.

## **2. Membership**

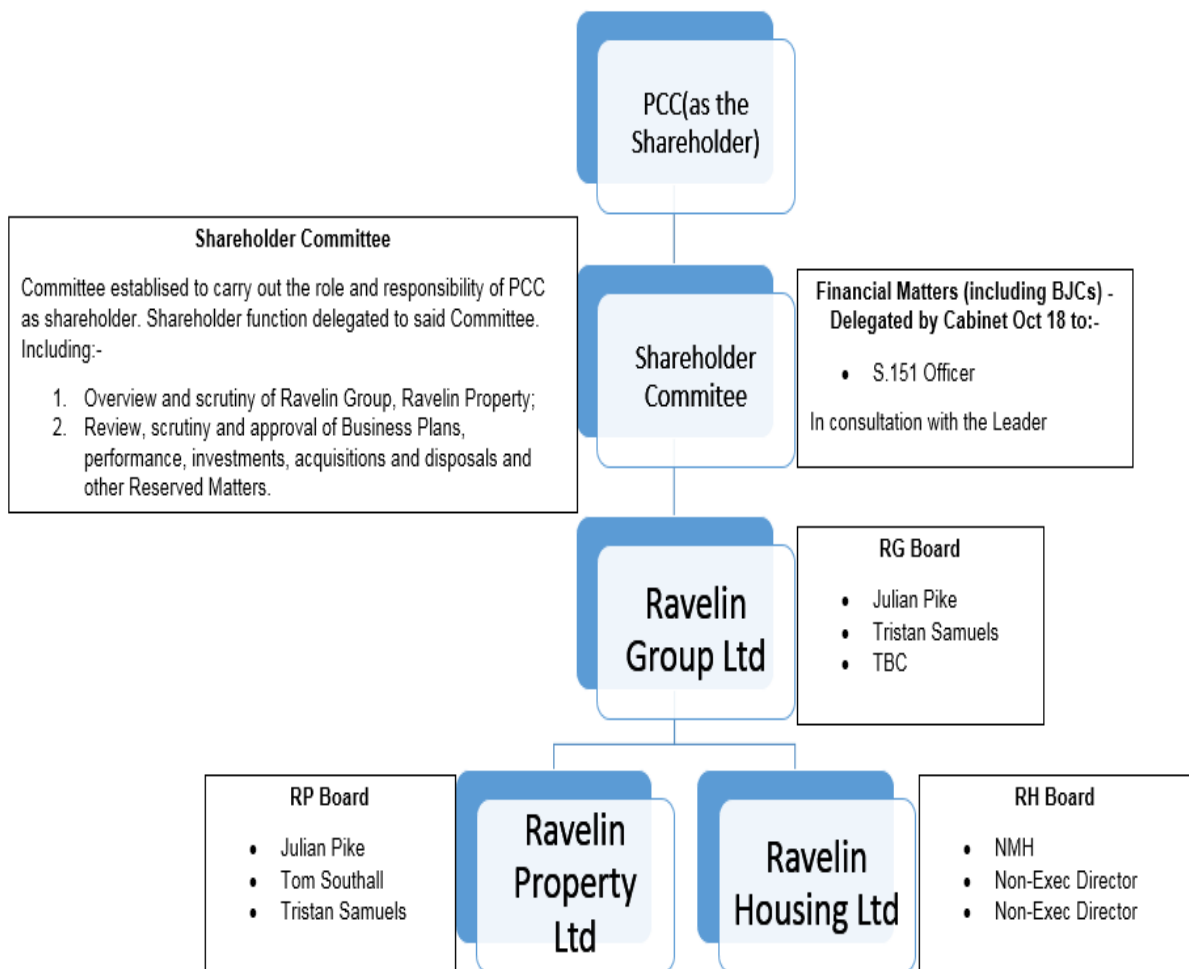
- 2.1. The shareholder committee shall consist of a majority from the Administration and 1 Member from all other parties, drawn from the elected Members of the Council. Subject to below, other Members of the Council (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed Member of the Shareholder Committee is unable to attend.
- 2.2. As the role of the Shareholder Committee is to advise and discharge executive functions in relation to company matters and to exercise the role of the Shareholder Representative, only Cabinet members can be members of the Shareholder Committee with voting rights, although other Cabinet members and non-Cabinet members can be invited to attend, without voting rights.
- 2.3 The Leader will be the chairman of the Shareholder Committee and will have the casting vote in the event that a majority decision cannot be reached. A Vice Chair will be selected from the elected members of the Shareholder Committee.
- 2.4 The necessary quorum for the meeting will be no less than 3 elected and vote rights bearing Cabinet Members of the Council present.

## **3. Meetings**

- 3.1 The Shareholder Committee will meet as regularly as required to ensure proper exercise of its functions but not less than quarterly.
- 3.2 The members of the Shareholder Committee may invite the Chief Executive, Section 151 Officer, City Solicitor, Officer of the Council or their deputies and any other persons as required who will be the advisors to the Shareholder Committee.
- 3.3 It is anticipated that the directors of companies will be invited if their input is required to make an informed decision.

## **4. Administration**

- 4.1 The agenda of the meeting together with any supporting documentation will be provided to members of the Shareholder Committee at least 5 working days in advance. This notice period may be waived if the Chair of the Shareholder Committee so agrees.
- 4.2 The meetings of the Shareholder Committee will be minuted which will subsequently be approved at the next meeting.



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Cabinet Office

# Guidance for Directors of companies fully or partly owned by the public sector

January 2016

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# About this guidance

This guidance paper is to help Directors of companies owned by the public sector (e.g. joint venture companies), in full or in part, to understand their duties and responsibilities, including identifying and managing conflicts of interest. It should be read in the context of other documents that cover aspects of public sector governance and ethical guidelines including but not limited to:

- [Managing Public Money \(MPM\)](#) (specifically the principles and standards set out in section 1.1 of the MPM)
- [Code of Conduct for Board Members of Public Bodies](#)
- [Guidance on Probity and Conflicts of Interest for Public Appointments](#)
- [The Civil Service Code](#)

## Who should read this Guidance?

All Directors of companies fully or partly owned by the public sector.

"Director" is defined, under section 250 of the [Companies Act 2006](#), to include any person occupying the position of director, by whatever name called, which includes de facto directors (i.e. not formally appointed but carry out all the duties of and makes decisions as a director) and shadow directors (i.e. anyone who is directly 'calling the shots' at a company or an area within the company).

# Director's responsibilities and duties

## All company Directors

Notwithstanding civil service and public sector responsibilities, all Directors of companies have legal responsibilities, as defined under the Companies Act 2006, and under a wide variety of other laws and regulations such as insolvency and health and safety legislation.

The general duties of directors are set out in Chapter 2 of Part 10 of the Companies Act 2006:-

- to act within powers in accordance with the company's constitution and to use those powers only for the purposes for which they were conferred
- to promote the success of the company for the benefit of its members as a whole
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts, or possible conflicts between interests as a Director and the interests of the company
- not to accept benefits from third parties, if they may be regarded as likely to give rise to a conflict of interest
- to declare any direct or indirect interest in a proposed transaction or arrangement.

## Directors appointed by a public sector body

Directors appointed by a public sector body have the same responsibilities as any other director under the Companies Act 2006. They must also continue to act in accordance with other applicable legislation, relevant civil service and public sector guidelines, including around managing public money and standards for conduct in public life.

It is worth noting that a civil servant's responsibilities to the relevant Government Department can place demands on him / her as director that make it unrealistic to expect the same degree of independence as one can expect from a director that is not a civil servant. This can sometimes create apparent or real conflicts of interest between the priorities of the relevant Government Department and of the Company in question.

These potential conflicts should be explored and resolved when the respective Company is established and when individual Directors are appointed, including making sure there is effective governance in place .. This may include seeking advice from e.g. Her Majesty's Treasury (HMT), Cabinet Office (CO), The Shareholder Executive (ShEx) and external advice. In line with the MPM guidance of this type of conflict, Directors of public bodies which are constituted as a company should take care that fulfilling these personal responsibilities does not conflict with their duties as a board member of a public body.

Useful contacts:

Cabinet Office (Commercial Models): Thomas Vogt-Skard (Tel 07920 703092)

Useful resources include:

- [Managing Public Money](#) (HMT)
- [Code of Conduct for Board Members of Public Bodies](#) (CO)
- [Guidance on Probity and Conflicts of Interest for Public Appointments](#) DCMS
- [The Civil Service Code](#) (Civil Service)

# Conflicts of interest

All Directors have a legal duty to avoid conflicts of interest.

Section 175 of the [Companies Act 2006](#) sets out the directors' duty to avoid conflicts of interest; Section 175(1) of the same states that: "A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company."...

For a Director who is a public servant, a conflict of interest might occur where e.g.:

- there are conflicts between different professional duties ("professional conflicts of interest"). For example where a Director is a member of two boards, or where a Director has competing loyalties to their public sector employer and the commercial venture to which they have been appointed director; or
- there are conflicts between Director duties and private interests, for example a financial or family interest ("personal conflicts of interest").

Conflicts of interest can be actual, potential or perceived.

- Actual - there is a real conflict between duties and interests.
- Potential - there could be a conflict between duties and interests.
- Perceived - a third party could form the view that there is a conflict between duties and interests.

It is impossible to define all instances of a conflict of interest, so in many cases a reasonable degree of openness and judgment is required by Directors to assess the nature and extent of a conflict of interest.

Under s175(4) of the [Companies Act 2006](#) the duty to avoid conflicts of interest is not infringed—

- if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- if the matter has been authorised by the directors.

The duty to avoid conflicts of interest will continue to apply after a person ceases to be a director as regards the exploitation of any property, information or opportunity of which he became aware when he was a director.

All conflicts of interest must be disclosed to the board of Directors (excluding the director affected). If you are unsure whether you have a conflict of interest it is always better to disclose it to your board and consider seeking independent legal advice. Directors who are public servants should also disclose the matter to their line manager.

There will be situations, determined on a case by case basis, in which conflicts of interest can be managed. For example, there may be scope within the organisation's constitutional documents (in its current form or as properly amended) to:

- reserve certain issues to be decided by specific participants only, rather than the entire board
- impose a restriction on directors from voting on issues where they may have a conflicting interest
- expressly allow a director to vote on a matter in which they have a conflicting interest, provided that the nature and extent of the conflict is fully disclosed to the board

A failure to acknowledge and manage a conflict of interest could cause a significant reputational risk, may result in disqualification and have financial consequences for the Director. Moreover, some conflicts can also have criminal implications. Remember, if you think you might have a conflict of interest, always disclose it and consider seeking independent legal advice.

# Liabilities and Indemnity protection

## Directors' Liabilities

Chapter 7 of Part 10 of the [Companies Act 2006](#) deals with directors' liabilities.

The directors' duties are owed to the company, so shareholders or third parties will normally only have a cause of action against the company, not against individual directors, where directors breach their duties.

However, directors may also incur personal liabilities, both civil and criminal, for their acts or omissions in directing the company. It is beyond the scope of this guidance to list all the various matters for which directors can be held to be liable but Directors can be exposed to numerous claims for personal liability arising from wrongdoing while managing the company. For example, a director may incur liability:

- To the company for breach of the director's general duties under the [Companies Act 2006](#) or for wrongful trading under the Insolvency Act 1986;
- To third parties, such as an investor for misrepresentation;
- To employees for discrimination under the Equality Act 2010;
- Under legislation imposing personal liability on directors, such as health and safety legislation, environmental legislation, the Financial Services and Markets Act 2000, the Corporate Manslaughter and Corporate Homicide Act 2007 and the Bribery Act 2010; and
- For costs incurred in defending civil, criminal or regulatory proceedings.

## Indemnity protection

Where there is a publicly owned company, Government will decide on a case by case basis, with regard to the [Companies Act 2006](#) whether it will offer any kind of indemnity to Directors. Under section 232(1) of the [Companies Act 2006](#), any provision that purports to exempt a director (to any extent) from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

Paragraph A5.4.19 of the MPM guidance provides additional clarification of the Government's position on indemnifying Directors; setting out that it is common for departments to give certain kinds of indemnity to civil servants involved in legal proceedings or formal enquiries as a consequence of their employment, perhaps by acting as a board member of a company. Please refer to the MPM guidance for more information.

# Other resources

Some other resources that Directors may wish to consult include:

- The National Audit Office has published a report on [managing conflicts of interest in the public sector](#).
- Training courses for civil servants that are company directors are available both from [Civil Service Learning](#) (CSL) and suitable training for company directors is also available from the [Institute of Directors](#) (IoD).
- [UK Corporate Governance Code](#).





**THE GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES  
- CODE OF PRACTICE (cabinet and scrutiny example)**

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## The Governance of Council Interests in Companies - Code of Practice

### 1. Introduction

- 1.1 The purpose of this Code of Practice is to provide a reference point to the Council [local authority] and interested parties (councillors, officers, company representatives and contractors) in understanding the requirements of the Council in setting up a local authority company, and in particular a local authority trading company (LATC), and how the governance arrangements for that company will work once set up.
- 1.2 The OECD/G20 helps define corporate governance by saying that it:
- *“involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders; and*
  - *“provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”.<sup>1</sup>*
- 1.3 This Code of Practice therefore sets out how the Council will normally go about managing those relationships and ensuring that a company will go on to deliver the objectives established for it by the Council. It also briefly explains and makes reference to the law and basic requirements placed upon a local authority in establishing or owning companies.
- 1.4 The Code of Practice is set out as:
- an explanatory background;
  - a set of guiding principles; and then
  - a set of working expectations.
- 1.5 Attached, as appendices, are also key documents used in this process.

### 2. Background

#### **(a) Local authority trading and the local authority trading company <sup>2</sup>**

- 2.1 There are long-established powers for councils to trade. Among the most important is the Local Authorities (Goods and Services) Act 1970, which authorises councils to enter into agreements with other local authorities and other designated public bodies, for the provision of goods, materials and administrative, professional and technical services, for the use of vehicles, plant and apparatus and associated staff, and for the carrying out of maintenance. Payment terms are set out in an agreement. These are not limited to cost

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<sup>1</sup> “G20/OECD Principles of Corporate Governance - OECD Report to G20 Finance Ministers and Central Bank Governors” - September 2015

<sup>2</sup> Source: Local Government Association Briefing

recovery. The 1970 Act is the bedrock of trading within the public sector and there is substantial experience of its operation. But the Act is limited in scope. For example, it does not allow trading with the private sector or the public at large. Other established trading powers are specific in nature, such as the Local Government (Miscellaneous Provisions) Act 1976, which enables councils to enter into agreements with anyone for the use of spare computer capacity.

- 2.2 The Local Government Act 2003 added new possibilities to charge for services, to both provide extra services at cost and to trade with the private sector. Under the 2003 Act, the Government authorizes trading by means of a trading order. The Trading Order currently in force was made in 2009<sup>3</sup>, which permits all councils in England to trade or "to do for a commercial purpose", anything which they are authorised to do for the purpose of carrying on their ordinary functions, which includes use of the granted general power of competence.
- 2.3 Under that 2003 Act and Trading Order, as augmented by the Localism Act 2011, for a local authority to exercise the power to do things for a commercial purpose (which the authority couldn't otherwise do), then it must be done through a company. Councils are thus enabled to establish a company by which they can trade with the private sector for a profit - that is to enter into commercial contracts. The profits may then go back to the council through dividends or service charges.
- 2.4 The reason given for this legislative requirement was that:  
*"local authorities and their trading arms have to be on a level playing field with the private and commercial sector in both a positive and negative way. They should not be at a disadvantage, but they should not have an outstanding advantage. Taxation is a particular issue. It is right to carry forward the requirement that such bodies should be companies and trading as such."*
- 2.5 To exercise the power to establish a company and trade, a local authority must first approve a business case ('a comprehensive statement') covering:
- the objectives of the business;
  - the investment and other resources required to achieve those objectives;
  - any risks the business might face and how significant these risks are; and
  - the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
- 2.6 That business case is then implemented and refreshed by way of a business plan, which should be updated and submitted for approval each year, to guide the company in carrying out its continuing activities.
- 2.7 The local authority must also recover the costs of any accommodation, goods, services, staff and anything else they supply to the company under any agreement or arrangement. This is an absolute requirement and distinct from

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<sup>3</sup> *The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009*

the various rules on procurement or providing state aid.

- 2.8 Other important legal, commercial and financial considerations for councils or fire and rescue authorities setting up a trading company include company law issues, the cost of bidding for contracts, tax liability (corporation tax and VAT), EU procurement law and state aid rules and employment law (TUPE and pensions).

### **(b) The Local Authority Company**

- 2.9 The kind of company that must be utilized to enable the Council to trade in this way is defined in Part V of the Local Government and Housing Act 1989 ('LGHA 89'). That lists:
- a company limited by shares;
  - a company limited by guarantee and not having a share capital;
  - a company limited by guarantee and having a share capital;
  - an unlimited company;
  - a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965.
- 2.10 The LGHA 89, and the current Order<sup>4</sup> made under it, places local authority companies into one of three categories, being controlled or influenced by the local authority (a regulated company) or a company in which the local authority has a minority interest. It then goes on to set out a number of additional restrictions and requirements to which the local authority and the regulated company (or society) and any subsidiaries must adhere.
- 2.11 The reasons for these extra requirements were described by the Government of the day, when setting out the reasons for the LGHA 89, as being that:
- "when a company is effectively under the control of a local authority... the most significant controls that Parliament has laid down for the conduct of local authorities should apply to that company."*
- 2.12 These requirements cover issues of audit, payments, delivery of information to the authority's members and identification. For example, a regulated company is required to mention that it is a company controlled, or as the case may be influenced, by a local authority, naming the relevant authority or authorities, on all relevant documents, which are defined by reference to the companies legislation and are the same documents on which a company is required to disclose its registered name<sup>5</sup>, such as business letters, its order forms and its websites.

### **(c) Other Local Authority Entities**

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<sup>4</sup> *The Local Authorities (Companies) Order 1995*

<sup>5</sup> "...being of any kind mentioned in paragraphs (a) to (d) of section 349(1) of the 1985 Act" - now Regulation 24 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 made under the replacement section 82 of the 2006 Act.

- 2.13 If it isn't needed as a means by which it can trade, a local authority is free to involve itself in any one of a number of different forms of sole and joint ventures to best assist it in achieving its goals and aims, which may or may not involve establishing an entity that has a separate legal personality. These may also be as above, companies as defined by the Companies Act and which can include an industrial or provident society or a community interest company. They may alternatively be established as a distinct trust, with the council or appointees as trustee. They may be embodied as limited liability partnerships. They may also exist simply as unincorporated partnerships, with other public bodies or private persons (that can often act as if they were a distinct entity), such as the Local Economic Partnership.
- 2.14 There are certain rules yet to be brought into force, and the Secretary of State holds reserve powers, that may require, prohibit or regulate the taking of specified actions by entities connected with a local authority and those appointed to or representing the local authority at them<sup>6</sup>. In this respect:
- "entity" means any entity, whether or not a legal person, and
  - an entity is stated to be "connected with" a local authority if financial information about that entity must be included in the local authority's statement of accounts.
- 2.15 Whilst this Code of Practice will apply to all companies in which the Council has an interest, it may not be as appropriate for the governance of the Council's relationship with other entities which it is connected to, is a member of or has an interest in. In these instances, regard will be had to this Code but its application will be determined on a case by case basis.

#### Limited Liability Partnerships

- 2.16 Particular amongst these is the limited liability partnership (LLP), which are an increasingly common entity of which local authorities are a member. A limited liability partnership is a body corporate (with legal personality separate from that of its members) and is formed of 'two or more persons associated for carrying on a lawful business with a view to profit'<sup>7</sup>. An LLP will also file annual accounts and be registered with Companies House.
- 2.17 LLP's have a number of advantages for local authorities, including significant tax advantages and that it lies outside of the regulation applicable to local authority trading companies. Unlike a company, however, an LLP is not a vehicle by which the Council can undertake commercial activities via the general power of competence under the Localism Act 2011 or the charging and trading powers under the Local Government Act 2003, so a key disadvantage is that it must rely on specific local government powers and the vires of the functions included must be carefully considered. An LLP is also not suitable for later conversion to a company or to be formed as a charitable body. An LLP is, therefore, very well suited to forming joint ventures to deliver local government

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<sup>6</sup> Section 212 Local Government and Public Involvement in Health Act 2007

<sup>7</sup> Limited Liability Partnership Act 2000

functions such as land and property development<sup>8</sup>.

- 2.18 The cross-application of this Code will therefore particularly apply to limited liability partnerships (LLP), where the management agreement will reflect many of the elements of the articles or shareholder agreement referred to below. This will include, for example, the same reserved decision making in respect of appointment of representatives to the partnership management board, receipt of financial and other information by the Council and that the venture is limited to only undertaking its business in accordance with the approved business plan.

### **3. Guidance**

- 3.1 In exercising the power to establish a local authority trading company (LATC), local authorities were obliged under the 2003 Act to have regard to Statutory Guidance. The “*General Power for Local Authorities to Trade in Function Related Activities Through a Company*”<sup>9</sup> was issued and it is to this document that this and other councils in establishing the companies have had regard to.
- 3.2 That Statutory Guidance is now out of date, however, and was withdrawn as of 17<sup>th</sup> June 2014. Whilst new guidance is awaited, the withdrawn guidance nevertheless remains useful and largely very relevant. Where it is still relevant, this Code has had regard to it and, where associated with the principles of this Code, accompanying direct quotes from the Government Guidance are included throughout.
- 3.3 All listed companies are subject to the *UK Corporate Governance Code*<sup>10</sup>. The Council will expect all of its companies and their subsidiaries, and indeed any company with which it is associated, to adopt the “comply or explain” approach of the UK Corporate Governance Code as a demonstration of best practice in corporate governance.
- 3.4 The *Corporate Governance Guidance and Principles for Unlisted Companies in the UK*<sup>11</sup> and also the *Corporate Governance Handbook*<sup>12</sup> have additionally been utilised in the compiling of this Code of Practice.
- 3.5 The Council itself has adopted a NNN Council Code of Corporate Governance and the approach of this Code of Practice will fall to be associated with the provisions of that Code.

### **4. Principles of Governance of Council Companies**

- 4.1 In setting out the governance relationship between the Council and its

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<sup>8</sup> “*Structures for Collaboration and Shared Services: Technical Notes*” (DCLG)

<sup>9</sup> First published: 29 July 2004: UK Govt Archive

<sup>10</sup> September 2014: Financial Reporting Council

<sup>11</sup> First edition: November 2010: Institute of Directors (IoD) and European Confederation of Directors’ Associations (ecoDa)

<sup>12</sup> Third edition 2013: Institute of Chartered Secretaries and Administrators (ICSA)

companies, group of companies and organisations it has invested in, this Code has three key underpinning principles. These are as follows, preceded by a relevant quote on the subject from the Government Guidance.

## **I. Controls and Freedoms**

### The Guidance:

- 4.2 *“A successful company will be one that works alongside the authority in delivering joint objectives. The authority will have to consider how to balance the need to assist the company to achieve its trading objectives with the principles of transparency, accountability and probity.”*

### The Principles

- 4.3 It is recognised that, whilst appreciating this should not be unfettered, a trading company needs to be given commercial freedoms to enable it to succeed.
- 4.4 Accordingly, governance arrangements will seek to ensure that:
- the company will be provided with sufficient freedoms to achieve its objectives; and
  - the Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.

## **II. Relationship, Integrity and Accountability**

### The Guidance:

- 4.5 *“It is important that trading companies can operate on an equal footing with their competitors, but it is equally important that they are not used as a device for inhibiting legitimate public access to information about local government and local government services.”*

### The Principles

- 4.6 It is recognised that, whilst appreciating its procedures operate in a way that protects the company’s commercial interests, those procedures should ensure that the Council can carry out its functions as an investor, as a trustee of public funds and a local authority committed to both due responsibility for the exercise of its functions and for providing a vision for the City.
- 4.7 Accordingly, governance arrangements will seek to ensure that:
- the executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;



- the executive can evaluate social and financial benefits and returns on investment; and
- the Council's overview and scrutiny committees are able to exercise their powers in relation to the executive's decision making

in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.

### **III. Understanding of role**

#### The Guidance:

- 4.8 *"A trading company will be a separate legal entity from a local authority. It will derive its legal authority from its Memorandum of Association and the Companies Acts. Its directors and officers will derive their authority from the articles of association and the law relating to companies.*

...

*"Those "who are appointed directors will participate directly in the activities of the company, and are answerable to the company and have the powers and duties of company directors whilst they do so.*

...

*"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."*

#### The Principles

- 4.9 It is recognised that, as company ventures have a separate legal personality to the local authority, the success and good governance of the company venture depends upon those involved understanding their role and responsibilities collectively and individually.
- 4.10 Accordingly, governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:
- their legal duties;
  - stewardship of assets;
  - the provisions of the governing documents;
  - the external environment; and
  - the total structure of the organizations and the venture
- are appropriately understood by Members of the Council in their role as part of the executive or of overview and scrutiny, by officers of the Council associated with these duties and by the directors of the companies.

## **5. Ownership and control of the company**

- 5.1 NNN Council, the local authority as a corporate body, will be a member of the company. The membership will be as guarantor if a company limited by guarantee or, as will be the norm if a LATC, the holder of shares (perhaps the only share) in a company limited by shares.
- 5.2 The rights and duties as a member of the company will, however, almost always fall to be exercised as an executive responsibility. This means that decisions to be taken by the Council as a member of the company (as shareholder) fall to be decided on by the elected Mayor/Leader. In the normal way, therefore, these functions may be delegated by the Mayor/Leader to the cabinet or an officer and will be subject to key decision and access to information rules, call-in and review by overview and scrutiny committee.
- 5.3 For ease of use, where decisions are to be taken by the local authority as a member of a company, those decisions are referred to in this Code as being taken by 'the executive'.
- 5.4 The authority of the shareholder is exercised where decisions of the company are reserved for approval of the executive before they can be implemented, but also directly in the form of a shareholder's written resolution or at the company's general meetings.
- 5.5 At the company general meetings the executive will be present and voting as a member of the company, where this presence and voting will be in the form of a single person known as the 'shareholder representative'.
- 5.6 Decisions to be made by the executive, rather than left to the company itself, are known as 'reserved matters'. Reserved matters cover such things as the approval of the company's annual business plan or mid-year amendments to it, the appointment of directors, certain key financing decisions and so forth. These are established either through agreement with the company, known as a shareholders agreement, or as set out in the company's governing articles of association.
- 5.7 The relationship between the local authority (and the companies it is a member of) is governed by these and other key documents that are required to establish a local authority company, and a trading company in particular. In establishing the local authority's company and then in governing the relationship with what is now a separate legal personality, the executive will need to put in place the following documents:
- The **business case** which assesses the risk involved in the proposed trading enterprise and decides whether or not it should be established and proceed to trade; the 'comprehensive statement' referred to in 2009 Order. It starts the process of business planning.
  - The **articles of association**, or the memorandum and articles of association as it used to be called, which is the constitution of the company. This is the legal documents required to set up a limited company and give details of its

name, aims and authorised share capital, conduct of meetings, appointment of directors and registered office.

- The **shareholders agreement**, or management agreement, which sets out the rights of the Council as the sole or co-shareholder and how it can exercise those rights. It details the powers of the board of the company and how and when the shareholder might influence those powers. It is important to note that the shareholder agreement is capable of being developed and added to as the company develops.
- The **financial agreements** which are the commercial agreements that set out what assistance is to be provided and on what terms. This may be purely financial, such as a direct loan or a facility such as a parental guarantee, and made on commercial terms. It may also be in the form of goods, services or staff to be provided and set out in a resourcing agreement or a service level agreement, which is likely to be on a service charge or cost recovery basis. The agreements may require regular and detailed access to information and financial reporting to the Council and/or holding company.
- The **business plan** which sets out the objectives of the business, how they are to be achieved and standards met adjusted in the light of experience and changing circumstances. It is a comprehensive analysis of the business situation at a particular point in time. It is often referred to as the annual business plan because it is expected to be submitted for shareholder approval annually.

5.8 A model shareholder agreement for use with the holding company, setting out the principal decisions reserved for the executive's approval, including subsidiaries of the company as a group, is outlined at Appendix 2.

## 6. Shareholder Group or Board

6.1 The structure described above creates a governance process whereby, so far as appropriate under this Code's Principles, the company is left to get on with its business. Following the UK Corporate Governance Code, the companies will utilise a unified board, with appropriate non-executive directors providing outside expert help and with board committees (such as an audit committee) to provide oversight and ensure delivery.

6.2 The Mayor/Leader, in turn, will seek to inform the executive decisions and to hold the company to account by utilising a reflection of the company board structure in the form of a Shareholder Group, including external expertise and sub-groups. The role of this group is to provide the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the executive as the shareholder has established for the company are being adhered to. In it, the Mayor/Leader (or his or her appointee) remains the decision maker but the Group act as advisors in the making of those executive decisions.

6.3 Such a Shareholder Group is considered to be an effective means of

governance of the companies. This is because it allows for decision making and discussion in an informed atmosphere, which also provides the executive with:

- a mechanism to communicate the shareholders' views to the company; and
- a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives.

6.4 It is intended that the Mayor/Leader (or his/her appointee) will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Group (in a similar manner to the Mayor/Leader's executive decisions made at various partnership boards and the health and well-being board). It is envisaged that key decisions concerning the companies will, however, still normally be made at meetings of the Cabinet.

6.5 The Terms of Reference for the Shareholder Group are set out at Appendix 1.

## **7. Scrutiny**

7.1 The overview and scrutiny committees have a significant role to play to ensure that the company is able, and the executive has properly required the company, to make sufficient returns for the investment to be worthwhile and, indeed, ensure that the social objects set for it are not lost in the drive towards the overriding and essential requirement for the company to be economically successful.

7.2 It is the executive, the Mayor/Leader and Cabinet, who is responsible for approving the business case to establish a company, of setting the right balance between the economic, social and environmental objects of a company when it is established and of subsequently exercising the Council's powers as shareholder.

7.3 Once established, the company must then get on with the business of delivering the objectives with which it has been tasked, within the parameters set for it. It must be otherwise free, however, to operate in its own best interests and to compete on an even basis with its competitors in the marketplace.

7.4 Again, it is the executive, either generally or when considering reserved matters, to whom the company must answer and by whom it is held to account for its success, or failure, in achieving the objectives set for it.

7.5 The key role of overview and scrutiny is then to advise the executive and hold it to account on behalf of the wider public interest and its role within the Council.

7.6 This creates a flow of information and accountability, in which

- the company needs to get on with the business of delivery;
- the executive needs to make the company decisions reserved to it and to hold the company to account for performing against them; and

- Members as part of overview and scrutiny need to advise on or scrutinise the decisions of the executive.

This needs to be done in a trading environment that requires them all to make speedy and reactive commercial decisions and to handle often highly valuable and commercially sensitive information.

- 7.7 Overview and Scrutiny, to fulfil its role, requires a means of access to the sensitive information and debate that inform the Shareholder Group and the Mayor/Leader's decision making, without either oppressing that process or endangering its own strictly non-executive role.
- 7.8 To this end it is considered that the Chair of Overview and Scrutiny Management Board (OSM) is best placed to be involved, use his/her knowledge of this committee and its remit to sift the information and be alert to those matters that need to be brought to the overview and scrutiny committees' attention and be investigated further. Accordingly, the Chair will be invited to the forum created to handle this crucial information flow, the Shareholder Group. To retain the independence required of the OSM Chair, this is not membership as direct advisor as part of the decision making, but as an informed observer.
- 7.9 Overview and Scrutiny committees may then review any matter concerning the Council's companies and make proper use of its full powers and function, having had these matters drawn to its attention by, and with the benefit of, a fully informed Chair.
- 7.10 In carrying out any such review, the Government Guidance states that:  
*"The local authority should ensure that its overview and scrutiny committees are able to exercise their powers in relation to the discharge of local authority functions under the relevant legislation.*
- 7.11 To this end, the legal framework for local authority companies includes an express requirement concerning the provision of information to Members of the Council, which reflects the similar provision in relation to local authorities generally. This states that a local authority regulated company "*shall provide to a Member of the Council such information about the affairs of the company as the member reasonably requires for the proper discharge of his duties.*"<sup>13</sup>
- 7.12 The exception here is that the company cannot be required to provide information in breach of any enactment, or of an obligation owed to any person.
- 7.13 It is also worth noting that, where a Member or an officer has become a member or director of a local authority company, the local authority must make arrangements for them to be open to questioning about the company's activities by Members of the Council at a meeting of the authority, or a committee or sub-committee, or by cabinet members in the course of proceedings of the cabinet or a committee of the cabinet. Importantly, the Member or officer is not required

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<sup>13</sup> Article 7, Local Authorities (Companies) Order 1995

to disclose confidential information about the company.

## **8. Investment and Finance**

- 8.1 The balance of how each company venture may be financed will be assessed and set out in the business case, required at the very beginning of the venture and the incorporation of the company as described above, and in business plans as made or amended and agreed by the executive. Each decision will take into account state aid implications and such matters as where legislative and regulatory requirements demand full cost recovery or standard commercial terms to be applied.
- 8.2 Where the purpose of a company is to better utilise assets owned by the Council, for example, the principal investment in the company is likely to be those assets. The assets may then be made use of by the company through their being transferred in their entirety from the Council to the company or by being provided to the company by the Council under a lease, loan or use agreement.
- 8.3 Investment at the initial stage of a trading company will normally be by way of purchase of share capital, either directly in the company or, more likely, via NNN Holding Limited, often together with a loan or loan facility on commercial terms. This is to fund those costs which arise at the start of the company or company joint venture, including the holding company and its subsidiaries, to cover initial set up costs, working capital costs and collateral costs. For purchased company interests, share value should reflect the fair value of the going concern.
- 8.4 Direct investment may well also be by various other forms of agreement. This may be for the supply of monies, directly as a loan or under a parental guarantee, credit agreement, facility and so forth, which should be on standard commercial terms. It may also be for the supply of goods, property or staff, as described above and at section 12 below.

## **9. Companies Structure**

- 9.1 The principal means by which the local authority will normally own and hold interests in its trading and other forms of company will be through a single company (the Company), acting as a holding company. Wherever practically feasible and advantageous to the authority, each of the individual company ventures will then be a subsidiary of the single company and they will operate together as part of the a group of companies.
- 9.2 The primary objective of a group structure is that the Company, as a holding company, is able to provide a single point of focus for leadership of the authority's commercial activity, communication with the authority, utilisation of shared resources and as a forum for strategic decision-making across the group. Its board of directors will set the overall strategy in relation to the

activities of its subsidiaries.

- 9.3 In doing so, the board of the Company will also sign off all business plans and hold its subsidiaries to account. The executive, supported by the Shareholder Group, will approve any decisions that would have an effect on the shareholder's rights and hold the group of companies to account as a whole.
- 9.4 The subsidiary companies will, therefore, be expected to adopt a common 'group' approach, with the managing director and the Company's board holding a clear leadership role on behalf of the authority. This will, for example, involve the group of companies:
- (a) using existing Council policies and strategies where appropriate and the company and its subsidiaries, wherever practicable;
  - (b) adopting a common approach across the group on branding and its finance, ethics and procurement policies and practices;
  - (c) being required by the authority to have the holding company approve the procurement and authorisation of spend levels set by each company for its directors and staff; and
  - (d) also having more detailed matters to be set as a common approach by the company for itself and its subsidiaries by the holding company, where it considers that that will increase effectiveness, efficiency and engender common understanding, which is likely to include such things as group financial procedure rules, fraud and whistle-blowing policies, decision making levels and procedures, capability and disciplinary procedures, health and safety practices and so forth.
- 9.5 The Company will similarly provide a natural home and conduit for support and control roles that will be common across the group, such as company secretarial services, procurement, finance and human resources. These fall into two groups. The first is those services that would be better employed directly by the holding company, such as financial and payroll systems for example. The other are those provided as managed services to the companies by the Council, under a resourcing agreement (or service level agreement), because this is more cost effective, appropriate or is a demand of the shareholder, such as HR or company secretarial and legal services. (This is described further at section 12 below).
- 9.6 The secondary purpose is financial, in that group companies can share VAT registration where appropriate and can be treated as holding group accounts. The latter means that reporting is as one set of accounts and that profit and loss can be distributed across the group, setting one off against another, as might be desired to meet the aims and values set for the group.
- 9.7 The executive will approve the appointment of auditors for the group and its accounts will appear as part of the Council's financial statements.

## **10. The Company's Board**

- 10.1 The Government Guidance advised that a local authority company will be run

by its board of directors answerable to the shareholders, in accordance with the articles of association, and goes on to suggest that a board of between 3 and 8 directors is most likely to be practical (although this will be dependent on the circumstances of each company). The participating Local Authority should be represented on the board of its company.

10.2 The representatives who are appointed directors by the executive will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, the Government Guidance goes on to suggest that this requirement in a trading company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.

10.3 Whilst it will therefore be the norm that officers, not members, will be appointed as directors, this should not prevent the Council from appointing Members as directors where that is considered to be in the best interests of the company and the Council. If Members of the Council are appointed as directors of a company, the following paragraphs should be borne in mind and, in particular, that the member notes that:

- Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the Council: the Council Member / company director will always have a conflict of interest when it comes to their role as a councillor that must be resolved and resolved in the favour of the company. A Member as director, therefore, must not be a party to making a decision of the Council affecting the company, but may proffer evidence or advice to the Council on the company's behalf when invited to do so.
- Liaison should be through the key Member and/or officer concerning the company and the Council's activities
- The Member's Code of Conduct applies to a Member's activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict notified to the company secretary and to the Council's monitoring officer.
- The only monies or other remuneration to be received by the Member in connection with the directorship will be as a special responsibility allowance (SRA) given by the Council to the amount of the corresponding SRA in the Members' Allowances Scheme.

10.4 As the holding company for the group, the Company board of directors will be formed of:

- Executive directors, being:
  - the managing director;
  - with the option of the managing directors of the authority's principal trading companies where appropriate
- Non-executive directors, being:
  - a chief officer of the Council (Chair of the Board);



- independent person(s) appointed to bring oversight, experience and skills that would be advantageous and appropriate for the companies;
  - other senior officers of the Council as appropriate; and
  - Members of the Council if considered advantageous and appropriate.
- 10.5 The chair of the board of directors, as Council appointee, will have a deciding say to be exercised through means of a 'golden vote' procedure on the board. This approach is to ensure that the Council's officers will always be able to out-vote the directly appointed directors on the holding company. Such matters as the quorum requirement for board meetings of the company and the like will be expected to reflect that objective.
- 10.6 The Company will have two standing committees, which will be as follows:
- The Remuneration Committee, which will conduct appointments and remuneration decisions and recommendations to the Council (where an appointment is not wholly reserved to the Council).
  - The Audit Committee, which will fulfil the same role and function as the Council's Audit Committee, the outputs of which will feed into the holding company board, the company business plans and the Council's own statement of accounts and Annual Governance Statement.
- 10.7 In respect of the individual wholly owned trading companies, non-trading (Teckal) companies and joint ventures, the appointment of directors of the company will be as are considered best to meet the requirements of the subsidiary or venture concerned.
- 10.8 Where an officer or Member is placed on a company board, he or she will be provided with an indemnity for their actions in that role. This is provided for under the Local Authorities (Indemnities for Members and Officers) Order 2004. It should be noted, however, that any such indemnity only covers actions taken honestly and in good faith.
- 10.9 Appointments of an officer as a company director will be of the relevant post or office of the Council, not as an individual. This will be reflected within each of the companies' articles in that if any one of the Council appointed directors ceases to be an employee, office holder or Member of the Council, as applicable, then they automatically also cease to be a director of the company.
- 10.10 The remuneration of officers of the Council appointed directors to a company controlled or influenced by the Council, other than permitted expenses, will be met by the Council and not the company. This is because, whilst that director's overriding duty is to the company, that person's role as director on the company board is only because of, and in fulfilment of, their employment as an officer of the Council, for which they are remunerated by the Council under that contract of employment. The position on the company is an inherent part of their job, for which payment is not to be made twice, directly or by different persons, for the same work.

- 10.11 That is not to say that the Council would fail to recognise that the position of an officer appointed as a company director or company officer will include distinct and potentially onerous additional responsibilities. Rather, it is that it is the Council that needs to recognise the value of those responsibilities, through a job evaluation process or other means by which the Council sets salaries, in considering any review of an officer's remuneration. To do otherwise risks a future action against the officer or the Council and, if a payment were made to a Council officer by the company that was considered to be a fee or reward accepted under the colour of his or her office or employment other than his proper remuneration, that officer may also have committed a criminal offence<sup>14</sup>.
- 10.12 The law requires that, where a Member of the Council is a director of a regulated company, the Member may only receive payment for that directorship up to the amount payable for that role under the authority's Special Responsibility Allowance (SRA)<sup>15</sup>, set as a result of the recommendation of the Independent Remuneration Panel<sup>16</sup>. These payments may be made by the company directly or, more normally and as would be the case here, by the Council for reasons of simplicity, accounting and accountability.
- 10.13 The view behind this is that the regulated company is, in fact, simply a part of the Council. In the same way that there is a bar on Members of the Council being employees, the philosophy runs akin to that for officers in that the Council may not pay a councillor for any other activities they may carry out as a Member of the Council other than through their SRA.

## **11. Conflicts of interest**

- 11.1 The Government Guidance states that "*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.*"
- 11.2 There will always arise a point where, in matters of reporting, contractual discussion, investment requests or resourcing agreements, there is potential for the same person to be a decision maker or advisor both for the Council and the company.
- 11.3 This is a reflection of the position of each company as a separate legal entity and that the directors of each company are subject to. As the Corporate Governance Guidance and Principles puts it:

*'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'.*

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<sup>14</sup> s117(2) of the Local Government Act 1972

<sup>15</sup> Article 5 of the Local Authorities (Companies) Order 1995

<sup>16</sup> Reg 21 of the Local Authorities (Members' Allowances) (England) Regulations 2003.

- 11.4 Appendix 3 sets out a briefing for directors' duties.
- 11.5 An essential element of this in terms of this Code is that, whilst changes to the Companies Act and current articles of association allow for appropriate provisions dealing with conflicts of interest and the ability of company directors to authorise them, an officer of the Council or a Member can never waive their duty to act in the public interest in exercising their responsibility for functions of the Authority. This will, on occasion therefore, create an inescapable conflict of interest between someone's role as a Member or, more likely, as an officer of the Council and as a director of a company, of which those involved need to be aware.
- 11.6 There are also natural points where it is expected that the Council and one of its trading companies will take a different approach. In this respect, the Government Guidance states that:
- “The local authority should consider appointing a ‘contract officer’ and/or ‘contract member’ with primary responsibility for liaison between the company and the authority, and for access to information about it. It might wish to place limitations on these individuals to ensure that they are fully accountable to the authority as a whole and to ensure that the Section 151 Officer/Monitoring Officer countersigns major decisions about the company’s operations.”*
- 11.7 This is the role of the Shareholder Group. In support of that function, the Council will appoint a lead authority and client-side officer to lead on managing contractual arrangements with the companies and in holding of the companies to account.
- 11.8 A certain form of wholly owned local authority also exist to provide services directly to or for the Council (known as a ‘Teckal’ company). The relationship between the authority and the company are set out in a contract for services. In this scenario, clear separation is required between commissioner and provider and there will be a requirement for further support to be provided, beyond the position of lead authority and client officer.
- 11.9 Officers placed into any of these roles are, at some point, likely to find themselves in a position where they are, or are negatively seen to be, acting against the interest of their own authority and also challenging the Council as their employers or senior managers to whom they might normally answer to. As a result of such activities, their performance in the company or actions they feel are required of them by the company, some of those officers may even find themselves in a position where it is no longer felt tenable that they can be appointed by the authority as a director of a company. The Council as an employer, from the viewpoint of both the executive and overview and scrutiny, wholly recognises these unusual positions that such officers may find themselves. The Council therefore undertakes that no officer will suffer any ill affect to his or her employment or career with the authority for fulfilling these activities to the best of their ability or in undertaking these actions asked of them.

## **12. Managed Services, Support Arrangements and Employees**

- 12.1 The authority is required under the 2009 regulations to recover the costs of any accommodation, goods, services, staff or any other thing it supplies to a company in pursuance of any agreement, or arrangement in place. It cannot subsidise the operation of the company in this way.
- 12.2 The Government Guidance in addition clarifies that
- “Because the power to trade is subject to a restriction requiring it to be exercised through a company, it follows that the authority has the requisite power to enter into arrangements with a company in order for the trading power ... to be exercised. It is not necessary therefore, for the company to be expressly designated as a public body under the Local Authorities (Goods and Services) Act 1970, in order for the authority to be able to provide it with staff, goods etc, for the purpose of exercising the power to trade.”*
- 12.3 This means that the authority may enter into an agreement with the companies to provide services at cost or as a surplus service charge and that staff time and resources utilized for company purposes should be carefully accounted for. Where this is done at cost, which shall be the norm, it is helpfully stated in the Guidance that the approach should be in accordance with the CIPFA definition of ‘whole cost’.
- 12.4 Referred to above as the ‘managed services’, those areas of the authority’s resources so utilized might include project management, initial set-up staff, human resources, audit, business continuity, communications, procurement, legal or finance and so on. Equally, it may be that the main source of staffing for the company’s trading activities comes from Council staff seconded for that purpose, be that whole time or on a client by client, job by job basis. It is for the company and the executive to agree what level of authority led resource is appropriate, should or could be delivered to the company in each case. The parameters of those services can be agreed through a Resourcing Agreement or what is known as a Service Level Agreement (SLA).
- 12.5 The authority as shareholder, however, does need to be assured that there are effective and robust support services in place in certain areas. This is to satisfy itself that sufficient standards of operational governance, legal and company secretarial compliance and effective financial management within the company are adhered to. The authority will reserve to itself the ability under the Shareholder Agreement to insist on supplying these services to a controlled company, at cost, if it feels that these standards are not otherwise being met or are not in its opinion likely to be met.
- 12.6 In particular, the Company Secretary role should have a consistent approach across all of the companies or group of companies. This is to ensure consistent interpretation of the compliance standards across the companies and of the governance relationship between the companies and between the companies

and the Council. In addition, it ensures that appropriate and proper intelligence is shared across the companies and the authority. In relation to all authority controlled companies and their subsidiaries, therefore, the position of company secretary as an officer (not a director) of each company in the group is to be fulfilled by the Council's Monitoring Officer, being the equivalent corporate governance, assurance and general counsel position for the Council. All company secretarial and general counsel duties for the companies will then be carried out through that office, either directly or through the position of an assistant company secretary, with the exception of where a conflict of interest is identified and is acknowledged by that officer.

- 12.7 With the exception of those staff supplied by or seconded from the authority for trading purposes or for managed services as described above, it is expected that staff of the companies will be directly recruited and employed by the companies themselves. Where the business case includes that staff are transferred this will be subject to full reporting and then consultation and requirements under TUPE legislation and guidance.

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*Adopted in accordance with the Cabinet decision of DDD*

*[To be] Presented to the NNN Council Audit Committee of DDD.*

**NNN COUNCIL**  
**SHAREHOLDER GROUP - TERMS OF REFERENCE**

**Overview**

The purpose of the Shareholder Group is to advise the Mayor/Leader in the exercise of his/her responsibility for the Council's functions as corporate shareholder of a company or group of companies and in their role to represent the interests of the Council as Shareholder Representative at meetings of a company.

**Decision making**

The Mayor/Leader (or other Cabinet member appointed by the Mayor/Leader for this purpose) may make decisions concerning companies in which the Council is or is proposed to become a shareholder, either:

- (a) in Cabinet; or
- (b) in the presence of the Shareholder Group.

**Membership and Arrangements**

The Shareholder Group shall consist of the Mayor/Leader (or other Cabinet member appointed by the Mayor/Leader for this purpose) in the presence of:

- (a) Such Members of the Cabinet as are appointed by the Mayor/Leader (which shall be at least two);
- (b) Two co-opted members, who will be independent persons providing relevant expertise and appointed on merit (but which process may be carried out in association with the Audit Committee's arrangements for co-opted appointments); and
- (c) Relevant senior officers of the Council as are appointed by the head of paid service (or their deputies); together with
- (d) The Chair of Overview and Scrutiny Management Board, as a Member of the Council from outside of the Cabinet, to act in the capacity of Observer.

The Service Director for Finance (s151 officer) and the Service Director for Legal and Democratic Services (monitoring officer), or their deputies, will be advisors to the Group to provide open and strong advice.

Other members of the Cabinet (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed member of the Shareholder Group is unable to attend

## **Restrictions on Membership**

As the Shareholder Group is to advise and discharge executive functions in relation to company matters and the role of the Shareholder Representative, only Cabinet members can be members of the Shareholder Group with voting rights, although other Cabinet members and non-Cabinet members can be invited to attend, without voting rights.

## **Meetings**

The Shareholder Group shall meet on a basis agreed by itself and normally in private.

The quorum shall be the Mayor/Leader (or other Cabinet member appointed by the Mayor/Leader for this purpose) in the presence of a minimum of:

- (a) one other Cabinet Member;
- (b) one independent co-optee; and
- (c) one senior officer appointed to the Group (or their appointed deputy).

An invitation to attend must have been provided to the Chair of Overview and Scrutiny Management Board/Committee (or their nominated deputy) at least three clear days in advance of the meeting taking place. This notice period may be waived if the Chair of Overview and Scrutiny Management Board/Committee (or their nominated deputy) so agrees.

An invitation to attend must also have been provided to the section 151 officer and the monitoring officer (or their nominated deputies), which will normally be at least three clear days in advance of the meeting taking place.

The Mayor/Leader (or appointee) will chair the Shareholder Group and a Vice Chair will be selected from the elected members of the Shareholder Group.

## **Sub Groups**

To assist it in its functions the Shareholder Group:

1. may establish and consult standing sub-groups, such as might be required in respect of:
  - (a) Audit and Risk;
  - (b) Ethical practices; or
  - (c) Nominations and Remuneration
2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and
3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Shareholder Group sees fit.

## Functions

1. Monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
  - (a) in financial matters
  - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
  - (c) against the values of the Council.
  
2. Evaluate and monitor:
  - (a) the financial and social returns on investment (be that shareholding, loans or direct investment); and
  - (b) risks and opportunities including those arising from joint ventures or new opportunities.
  
3. Consider matters reserved to the Council for shareholder approval, such as:
  - (a) Varying Articles of Association
  - (b) Varying ownership and structure
  - (c) Variations to shares (number of, rights, etc.
  - (d) Entering contracts that:
    - (i) have a material effect on NNN Council business (including other companies within the group)
    - (ii) are outside of the business plan or do not relate to the business
    - (iii) significant in relation to the size of the business, the business plan, etc.
  - (e) Material legal proceedings outside of ordinary business
  - (f) Adopting and amending business plans each year and strategic plans (3 years)
  - (g) Appointment, removal and the remuneration of directors (members of the company board)
  - (h) Selection of the chair of the board
  - (i) Appointment of auditors
  - (j) Issue of dividendsas more particularly set out in a company's Articles of Association or Shareholder Agreement.

## Relationship

The Shareholder Group as it considers appropriate in accordance with its functions described above, may:

1. report and make formal recommendations to the Mayor/Leader, directly or to



- the wider Cabinet;
2. make reports to and consult Overview and Scrutiny (including full Council) or
  3. make reports to and consult the Audit Committee, in relation to that Committee's particular functions.

OUTLINE OF THE  
**SHAREHOLDER AND COMPANY AGREEMENT**

1. DEFINITIONS AND INTERPRETATION
2. FINANCING THE COMPANY
3. DIVIDEND POLICY
4. SUBSIDIARIES
5. MANAGEMENT OF THE COMPANY
6. SHAREHOLDER GROUP
7. THE BUSINESS PLAN AND COMPLIANCE WITH THE BUSINESS PLAN
8. REPORTING AND ACCOUNTING MATTERS
9. BANKING ARRANGEMENTS
10. TERMINATION
11. UNLAWFUL FETTER ON THE COMPANY'S POWERS
12. ASSIGNMENT AND SUB-CONTRACTING
13. FURTHER ASSURANCE
14. REMEDIES AND WAIVERS
15. ENTIRE AGREEMENT
16. VARIATION
17. CONFLICT WITH THE ARTICLES
18. SEVERANCE
19. CONFIDENTIALITY
20. NOTICES
21. NO PARTNERSHIP OR AGENCY
21. COUNTERPARTS
22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
23. GOVERNING LAW AND JURISDICTION

Guidance Note to NNN Council Members and Officers when acting as  
Directors of Council Companies

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