**Constitution**

**Article 19: Council Companies**

* 1. **Introduction**

The Council has various statutory powers to enable it to set up a company which may take various forms (Council Owned Entity – COE). The Council must effectively manage the relationship between the Council and the COE to ensure that the COE can deliver the objectives established for it by the Council and to ensure transparent and robust governance processes for both the Council and the COE.

* 1. **Principles of Governance of COEs**

Any decisions or recommendations in relation to COEs shall be formed with clear reference to the principles outlined below.

* 1. The Council’s governance arrangements will seek to ensure the following:
* Appropriate Controls and Freedoms
  + The COE will be provided with sufficient freedoms to allow it to achieve its objectives, but
  + The Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained in line with the COE’s confirmed in the business case and business plan and that the trading activities of the COE are, wherever possible, conducted in accordance with the values of the Council.
* Appropriate Relationships, Integrity and Accountability
  + Procedures operate in a way that protects the commercial interests of the COE, those procedures will ensure that the Council can carry out its functions as an investor, as a trustee of public funds and a Council committed to due responsibility for the exercise of its functions.
  + An Executive Committee or the Leader can make decisions based upon complete and accurate consideration of COE business plans or proposals,
  + An Executive Committee or the Leader can evaluate social and financial benefits and returns in line with the business plan, and
  + The Council’s Overview and Scrutiny Committee(s) are able to exercise their powers in relation to the Executive’s decision making.
* Understanding of roles of the Council and the COE
  + That there is sufficient induction, regular training and other materials in place so that:
    - their legal duties,
    - stewardship of assets,
    - the provision of the governing documents,
    - the external environment, and
    - the total structure of the Council and the COE

are appropriately understood by Councillors in their various roles including as a Member of the Council, the Executive, Overview and Scrutiny Committees, Shareholder Board, by officers of the Council and by Directors of the COE and that the standards outlined in the Lawyers in Local Government Code of Practice are met.

* 1. **Roles, Responsibilities and Decision Making**

The creation of any new COE (including subsidiaries) or significant change in purpose of an existing COE is a Key Decision and will require a business case. The relevant Executive Member will be consulted in the development of the business case and the business case must be approved in accordance with the Executive decision making processes outlined in Article 10 – Executive Arrangements and Article 13 – Access to Information Procedure Rules.

* 1. The Council is the Shareholder/ Owner for each COE. As a default this function is discharged but the Leader of the Council. The Shareholder/ Owner can appoint a Shareholder Representative which will usually be the Chief Executive of the Council or a Corporate Director. The Shareholder/ Owner or Shareholder Representative will ordinarily approve all reserved matters and some may be referred to an Executive Committee or the Leader. Reserved matters are matters that are reserved for decision by the Council.
  2. Reserved matters follow the Council’s Executive decision making processes set out in Article 10 – Executive Arrangements and will be treated as subject to Article 13 – Access to Information Procedure Rules. Decision on Reserve matters relating to companies where the council has a controlling interest, or a minority interest will be taken in the same manner as wholly owned COEs. The constitution notes that in the case of COEs which are not wholly owned an Executive Decision is subject to the consent of the other shareholders in the entity which shall be governed in accordance with the provisions of the relevant Shareholder Agreement.
  3. Each wholly owned COE will be governed by a formally constituted Board which is tasked with delivering the Shareholder’s objectives and informing the Shareholder/ Owner on strategic and key operational matters.
  4. The appointment and dismissal of Directors (including non-executive Directors) is a reserved matter for the Shareholder/ Owner/ Owners. Directors are responsible for the management of the business of the COE with exception of the reserved matters.
  5. The City Council’s Overview and Scrutiny Committee is responsible for scrutiny of the Executive’s decisions in relation to COEs and can make recommendations to the Executive on COE related matters. Executive decisions on COEs are subject to the Call-in processes outlined in Article 11 – Overview and Scrutiny.
  6. Scrutiny Committees can invite COE representatives to attend meetings to provide information to support the scrutiny of the Executive. This does not extend to scrutiny of the COE and its performance.
  7. The Council’s Audit Committee provides comments on an Annual Report of the Shareholder Unit which reports on progress against the Shareholder Unit’s workplan. Audit Committee is not responsible for the examination of the business performance of COEs. Further information on the role of the Audit Committee can be found in Article 9 – Non-executive Functions and Committees.
  8. **Access to Information**

This should be read in conjunction with Article 13 – Access to Information Procedure Rules which covers access to meetings and documents of the Council, the Executive and its Committees.

* 1. Reserved matters which require Shareholder/ Owner consent are defined in the Articles of Association or Shareholder Agreement for each COE. The process for approving and recording decisions relating to reserved matter will be defined within the Shareholder Agreement and will be consistent across all COEs as far as possible. Such decisions are Executive Decisions and are also captures by the Council’s Access to information Procedure Rules.
  2. Each COE will maintain strong controls framework with adequate financial records which meet appropriate company standards. Each should have the documents set out below:
* Business Case – assesses the risks and benefits involved in the creation of proposed COEs
* Articles of Association – sets out the constitution of the COE
* The Shareholder Agreement – sets out the rights of the Council as the sole/co-shareholder and how it can exercise those rights
* The Funding Agreement – sets out what financial assistance is to be provided by the Council to the COE and on what terms
* The Business Plan – forward looking, setting out what the COE will do and the objectives of the business and how they are to be achieved
* The Shareholder Annual Report – looking back, providing a review of progress against the one year business plan
* Shareholder Board Agenda and summary or meeting discussions and decisions
* Monthly performance reports.
* Monthly management accounts
  1. All of the above documents and details about which individuals sit on the Shareholders Board and Board of Directors are accessible by Councillors and members of the public unless they contain exempt or confidential information.