

BATH & NORTH EAST SOMERSET COUNCIL

**PROTOCOL FOR GOVERNANCE ARRANGEMENTS OF LOCAL
AUTHORITY **TRADING** COMPANIES**

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1. Introduction

- 1.1 The Council may charge for discretionary services and may also trade for profit. If it decides to trade it is required to undertake this through a company. In deciding whether and how to exercise the trading power, the Council must have regard to its own procedures; Wednesbury principles of reasonableness; proper purposes and fiduciary duty. A business case and risk analysis for all commercial entities will be required in all cases and this Protocol adhered to.
- 1.2 The purpose of this Protocol is to provide a reference point to Members and Officers to understand the requirements of the Council in setting up a local authority company, and in particular a local authority trading company (LATCo), and how the governance of that company will work once set up.
- 1.3 This Protocol sets out how the Council will normally go about managing the relationship between the Council and the LATCo to ensure 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 Protocol is set out as:
 - an explanatory background;
 - a set of guiding principles; and then
 - a set of working expectations.
- 1.5 The attached appendices A.1-A.6 are the key documents used in this process.

2. Background

(a) Local authority trading and the local authority trading company ¹

- 2.1 There are long-established powers allowing 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. These agreements are not limited to cost recovery. While the 1970 Act is the basis of trading within the public sector and there is substantial experience of its operation, 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, eg 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 authorised trading by means of a trading order. The

¹ Source: Local Government Association Briefing

Trading Order currently in force was made in 2009², 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 general power of competence set out in the Localism Act 2011.

- 2.3 Under the 2003 Act and Trading Order, as augmented by the 2011 Act, if a local authority wishes 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, i.e. 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 is 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:
- a. the objectives of the business;
 - b. the investment and other resources required to achieve those objectives;
 - c. any risks the business might face and how significant these risks are; and
 - d. the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
- 2.6 The original business case is then implemented and refreshed by way of an annual business plan, which must be submitted for approval, 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 the various rules on procurement or providing state aid.
- 2.8 Other important legal, commercial and financial considerations for setting up a trading company include company law issues; the cost of bidding for contracts; tax liability (corporation tax and VAT); procurement law and state aid rules and employment law (TUPE and pensions).

(b) The Local Authority Company

- 2.9 The kind of company the Council can set up to trade in this way is defined in Part V of the Local Government and Housing Act 1989 ('LGHA 89'). This lists:

² The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

- a. a company limited by shares;
- b. a company limited by guarantee and not having a share capital;
- c. a company limited by guarantee and having a share capital;
- d. an unlimited company;
- e. a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965.

- 2.10 The LGHA 89, and the current Order³ made under it, places local authority companies into one of three categories:
- a. being controlled or
 - b. influenced by the local authority (a regulated company) or
 - c. 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 companies must adhere.

- 2.11 A regulated local authority company and any subsidiary of it, for example, is required to state on all correspondence that it is “**a local authority controlled company**” or “**a local authority influenced company**” (as the case may be) and name the relevant authority or authorities and is subject to rules concerning access by the Council’s auditors and for delivery of information to the authority and its members.

(c) Other Local Authority Entities

- 2.12 If a Local Authority does not want to trade, it 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 Enterprise Partnership.
- 2.13 Whilst this Protocol 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 Protocol and its principles but its application will be determined on a case by case basis.

3. Guidance

- 3.1 In exercising the power to establish a local authority trading company (LATCo), 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*

³ *The Local Authorities (Companies) Order 1995*

Activities Through a Company”.⁴

- 3.2 The Statutory Guidance is now out of date and was withdrawn from 17th June 2014. Whilst new guidance is awaited, the withdrawn guidance nevertheless remains useful and largely very relevant. Where it is still relevant, this Protocol has had regard to it.
- 3.3 All listed companies are subject to the *UK Corporate Governance Code*⁵. 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 Protocol as a demonstration of best practice in corporate governance.
- 3.4 The *Corporate Governance Guidance and Principles for Unlisted Companies in the UK*⁶ and also the *Corporate Governance Handbook*⁷ have additionally been utilised in the compiling of this Protocol.

4. Principles of Governance of Council Companies

- 4.1 In setting out the governance relationship between the Council and its companies, group of companies and organisations it has invested in, this Protocol has three key underpinning principles.

I. Appropriate Controls and Freedoms

- 4.2 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.
- 4.3 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. Appropriate Relationships, Integrity and Accountability

- 4.4 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 due responsibility for the exercise of its functions.

⁴ First published: 29 July 2004: UK Govt Archive

⁵ September 2014: Financial Reporting Council

⁶ First edition: November 2010: Institute of Directors (IoD) and European Confederation of Directors’ Associations (ecoDa)

⁷ Third edition 2013: Institute of Chartered Secretaries and Administrators (ICSA)

4.5 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 PDSP 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 roles of the Council and the commercial entity

4.6 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.

4.7 Accordingly, governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:

- a. their legal duties;
- b. stewardship of assets;
- c. the provisions of the governing documents;
- d. the external environment; and
- e. the total structure of the organizations and the venture

are appropriately understood by councillors in their role as part of the executive or of Policy Development & Scrutiny Panels (PDSP); 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 Bath & North East Somerset Council (BaNES), 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, if a LATCo, 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. The proposed structure for BaNES means that decisions to be taken as a shareholder fall to be decided by the Leader. In the normal way, therefore, these functions may be delegated by the Cabinet to an Executive member or an officer and will be subject to ~~key decisions~~ **specific reserved matters** and access to information rules, call-in and review by PDSP committee.

- 5.3 For ease of use, where decisions are to be taken by the local authority as a shareholder, those decisions are referred to in this Protocol 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 general meetings of the company.
- 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 etc. 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 the following key documents that are required to establish a local authority company, and in particular a trading company. 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:
- a. 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. It starts the process of business planning.
 - b. 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 document 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.
 - c. 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.
 - d. 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.

- e. 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

- 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 Cabinet, in turn, will seek to inform the executive decisions and holding the company to account 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 Cabinet (or its 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 Cabinet (or its appointee) will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Group. It is envisaged that ~~key decisions~~ **specific reserved matters** concerning the companies will, however, still normally be made at meetings of the Cabinet, eg the setting up of new companies.
- 6.5 The Terms of Reference for the Shareholder Group are set out at Appendix 1. **The specific reserved matters are set out in Schedule 4 of the Precedent Shareholder Agreement at Appendix 2.**

7. **Scrutiny**

- 7.1 The PDS Panels have a 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. The companies will report their performance on a six monthly basis to the Resources PDS.
- 7.2 It is the executive, which 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 The Group Leaders will also have access to the confidential information that the executive have access to in their briefing meeting. In this way the Council can ensure continuity of decision making in the event of a change in administration
- 7.4 The Terms of Reference for the Group Leaders Briefing Meeting are set out at Appendix 6.
- 7.5 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 it's own best interests and to compete on an even basis with its competitors in the marketplace. 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.
- 7.6 The key role of PDSP is then to advise the executive and hold it to account on behalf of the wider public interest and its role within the Council.
- 7.7 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 PDSP 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.
- 7.8 PDSP, to fulfil its role, requires a means of access to the sensitive information and debate that inform the Shareholder Group and the executive's decision making, without either oppressing that process or endangering its own strictly non-executive role.
- 7.9 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.*”⁸

- 7.10 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.
- 7.11 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 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 the BANES holding company, 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.

⁸ Article 7, *Local Authorities (Companies) Order 1995*

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 holding company. Wherever practically feasible and advantageous to the authority, each of the individual company ventures will then be a subsidiary of the single holding company and they will operate together as part of the BaNES Holding Limited's group of companies.
- 9.2 The primary objective of a group structure is that the holding company is able to provide a single 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 BaNES holding 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. This will involve the group companies using existing Council policies and strategies where appropriate. In particular, the Council will require the holding company and its subsidiaries, wherever practicable, to adopt a common approach across the group on branding and its finance, ethics and procurement policies and practices. For example, the Council will require the holding company to approve the procurement and authorisation of spend levels set by each company for its directors and staff.
- 9.5 More detailed matters will also be set as a common approach for itself and its subsidiaries by the holding company, where it considers that that will increase effectiveness, efficiency and engender common understanding. This 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.
- 9.6 The holding company similarly provides 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).
- 9.7 The secondary objective of the group structure 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.

- 9.8 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 As the holding company for the group, the BaNES Holding Limited's board of directors will be formed of:
- The **Chief Executive and** Strategic Directors and
 - other directors, including non-executive, as appropriate.
- 10.4 The Chair of the board of directors 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 any directly appointed directors on the holding company. Such matters as the quorum requirement for board meetings of the company and the like will reflect that objective.
- 10.5 BaNES Holding Limited will have two standing committees, which will be as follows:
- 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.
 - 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).
- 10.6 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.
- 10.7 Where an officer is placed on a company board, they 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.

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’.

11.4 Appendix 3 sets out a briefing for directors’ duties.

11.5 An essential element of this in terms of this Protocol 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 Councillor 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. **In the event of a conflict of interest the Monitoring Officer will operate the ethical walls policy set out in Appendix 4.**

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 Officers placed into any of these roles may 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 wholly recognises these unusual positions in which officers may find themselves. The Council therefore undertakes that no officer will suffer any ill affect to their 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 etc. It is for the company and the executive to agree what is the appropriate level of authority led resource that is appropriate, should or can 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

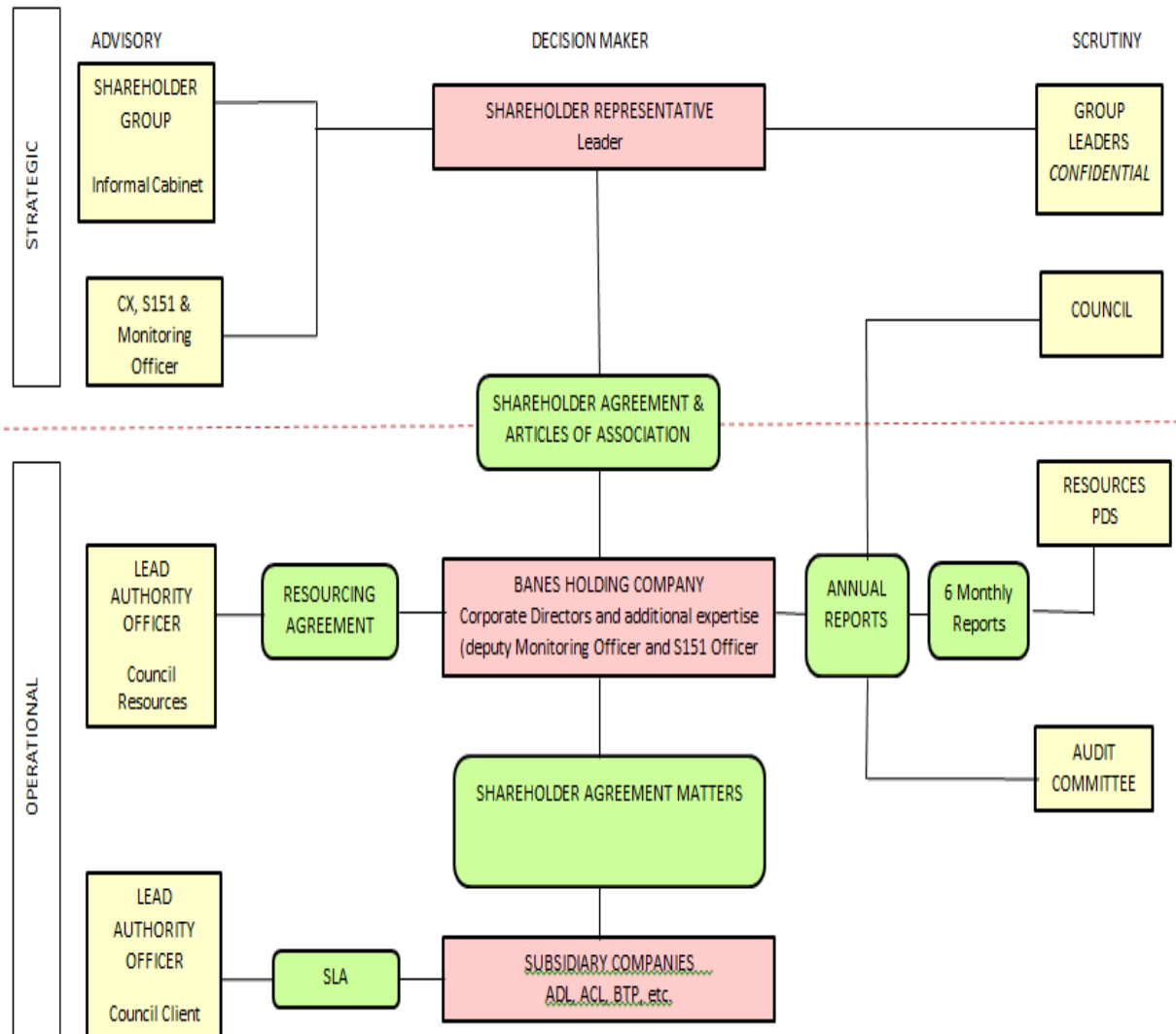
these standards are not otherwise being met or are not in its opinion likely to be met.

- 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 Deputy 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 In relation to company staffing, it is expected that staff of the local authority trading companies will be directly recruited and employed by the companies themselves, with the exception of those support staff supplied by or seconded from the authority as described above. Where the business case includes that staff are transferred, however, this will be subject to full reporting and then consultation and requirements under TUPE legislation and guidance.

Adopted in accordance with the Council decision of 14th September 2017.

Revised 2018

Company Governance Structure



Appendix B

Dated

2018

**BATH & NORTH EAST SOMERSET COUNCIL
LA TRADING COMPANY**

SHAREHOLDERS' AGREEMENT

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AGREEMENT DATE:

PARTIES

- (1) **BATH & NORTH EAST SOMERSET COUNCIL** of The Guildhall, High Street, Bath BA1 5AW (the Council)
- (2) **LATCO LIMITED** a company incorporated in England and Wales with company number [number] whose registered office is at

INTRODUCTION

- (A) As at the date of this Agreement, the Council is the sole owner of LATCO is the sole owner of LATCO. It is envisaged that other companies will be incorporated after the date of this Agreement and will become parties to this Agreement by executing a Deed of Adherence.
- (B) The Council wishes to generate additional income through commercial activities. The Council has established the Companies (and may do so in the future) under its powers, including those in Chapter 1 of the Localism Act 2011 and section 95 of the Local Government Act 2003, to assist in achieving that objective.
- (C) The Companies have agreed to work with the Council to achieve that objective.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

In this Agreement the following words and phrases shall where the context so admits have the following meanings:

Accounting Reference Date means 31 March

Articles means, in relation to a Company, the articles of association of that Company

Board Director Payment Policy means a policy adopted by a Company, following receipt of the prior written consent of the Council, in relation to the provision of payment for the Company's Directors (or some of them)

Board means, in relation to a Company, the Directors or those of them who are present at a duly convened and quorate meeting of the Directors

Business means the business of a Company as described in clauses 0 and 0

Business Day means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

Business Plan means the operational business plan and budget of a Company as adopted in accordance with clause 3 from time to time

Companies means those parties to this Agreement other than the Council and any other person which becomes a party to this Agreement by executing a Deed of Adherence, and **Company** means any one of them

CEDR means the Centre for Effective Dispute Resolution

Company's Representative shall have the meaning given in clause 7

Confidential Information means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

Council Representative means the person nominated by the Council from time to time to act as its authorised representative for the purposes of receiving all notices and other communications under clause 28, whose identity shall be determined by the Council in accordance with its Constitution from time to time and notified to each Company in writing in accordance with clause 28

Data Protection Legislation includes the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (when in force) and all applicable laws relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

Deed of Adherence means a deed in the form or substantially in the form set out in **Error! Reference source not found.**

Directors means, in relation to a Company, its directors and **Director** means any one of them

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Encumbrance means:

- a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

Financial Year means each accounting reference period of 12 months ending on the Accounting Reference Date (other than in relation to any Company incorporated after the date of this Agreement, for which the first Financial Year shall run on and from the date of incorporation of the relevant Company to and including the Accounting Reference Date in the following calendar year) or such longer or shorter period as the Council shall from time to time determine

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Former Agreements means:

- a) the overarching agreement entered into between LATCO and the Council dated;
- b) the member's agreement between the Council and LATCO Limited;

- c) any other agreement or understanding, whether or not in writing, concerning any Company's relationship with the Council

Holdco means any holding company to be incorporated after the date of this Agreement and wholly-owned by the Council

Intellectual Property means present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

Prohibited Act means any of the following acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - 1. induce that person to perform improperly a relevant function or activity; or
 - 2. reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- c) committing any offence:
 - 1. under the Bribery Act 2010;
 - 2. under legislation creating offences concerning fraudulent acts;
 - 3. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
 - 4. defrauding, attempting to defraud or conspiring to defraud the Council

Property or Properties shall mean any residential property or land owned by a Company from time to time;

Remuneration Policy means a policy adopted by a Company (following receipt of the prior written consent of the Council) in relation to the provision of remuneration (including salary, bonus, the provision of benefits-in-kind or otherwise) for its employees, officers and consultants

Reserved Matters means the matters specified in Schedule 4

In this Agreement:

- 1.1.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement. Unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules;
- 1.1.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;

- 1.1.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders;
- 1.1.4 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.1.5 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision. A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.1.6 a reference to **writing** or **written** excludes email and fax;
- 1.1.7 any requirement upon the Council or a Company to procure a particular matter or thing does or does not occur in relation to another Company shall be deemed to include an obligation to exercise its powers as a member of the latter (so far as the same is lawful and reasonable) to seek to ensure that the particular matter or thing occurs or does not occur (as the case may be). An obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.1.8 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.1.9 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.1.10 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.1.11 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
 - (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
 - (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

2 TERMINATION OF FORMER AGREEMENTS

Any and all Former Agreement(s) is/are terminated with effect from the date of this Agreement.

The parties release each other from all future obligations under the Former Agreements.

Each of the parties releases and discharges each other from all claims and demands, rights and remedies under or in connection with the Former Agreements, including without limitation claims for negligence and fraud, whether arising before, on or after the date of this Agreement, and in each case whether known or unknown to the releasing party.

3 BUSINESS AND BUSINESS PLAN

The business of the Holdco, once incorporated, shall be to act as a holding company of each other Company. The Company designated as Holdco shall state this in its Deed of Adherence and each other Company shall recognise that Company as the Holdco on and from the date of the Deed of Adherence. Holdco shall not exercise any rights it may have as a shareholder of any Company except as directed by the Council in writing.

The business of each other Company shall be to:

- 3.1.1 provide services to the Council and other legal persons controlled by the Council in accordance with its Business Plan then in force and on terms agreed between the Company and the Council;
- 3.1.2 provide services to any person not otherwise covered by clause 3.1.1 in accordance with its Business Plan then in force and on terms agreed between the Company and that person; and
- 3.1.3 provide such other services as the Council may from time to time determine and on terms agreed between the Company and the relevant counterparty/ies.

Holdco shall not be required to prepare a Business Plan.

Each other Company shall prepare in respect of each Financial Year a Business Plan to include such content as the Council may require from time to time and notify to the Company in writing. That Business Plan shall be:

- 3.1.4 prepared by that Company in accordance with the timetable agreed under the relevant governance arrangements of that Company from time to time; and
- 3.1.5 considered and, if though fit, approved by the Council (unless the Council delegates the ability to approve a Company's Business Plan to Holdco).

The parties agree to work both together (and with any third parties where required) in good faith, to procure that each Business Plan is prepared and approved in accordance with this clause 3 and that the Business of each Company is carried out to interface as seamlessly as possible with the operations and services of the Council.

If at any time there is a requirement for a corporate vehicle to be established other than a private company limited by shares, such as a private company limited by guarantee or a limited liability partnership, the Council intends that such vehicle shall be governed as far as possible in the manner in which a Company is governed, subject always to any necessary changes to reflect the law relating to that alternative vehicle.

4 COUNCIL'S ROLE AS ULTIMATE SHAREHOLDER AND SHAREHOLDER BOARD

The Council shall monitor and control the business and operations of each Company.

The Council:

- 4.1.1 shall, upon request, have unlimited, unrestricted and prompt access to any Company information and documents;
- 4.1.2 shall not be a part of any Board;
- 4.1.3 shall not usurp the functions of any Board but shall monitor the activities of each Company to ensure that they are acceptable and accountable to the Council as ultimate owner of each Company; and
- 4.1.4 may, in addition to those matters requiring Council consent pursuant to clause 5 make recommendations from time to time to any Board.

Any notice or other communication to or from the Council shall be sent to or from the Council Representative in accordance with clause 28. Any notice or other communication given to the Council Representative shall be deemed to have been given to the Council.

Where a decision, consent or approval is expressed in this Agreement to be required of the Council, it shall be given or confirmed by the Council Representative, depending on the Council's appropriate decision-making forum or person, for onward transmission to the relevant Company. Where a Council Representative has given or confirmed a decision, consent or approval, he or she shall be deemed to have had delegated authority to do so and any such decision, consent or approval shall bind the Council.

The Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company via the Council Representative within a period of 30 days from receipt of the relevant request, provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information to the Council Representative as the Council may require to enable it to consider the decision, consent or approval in question.

Once a consent or approval is given in accordance with clause 0 then, to the extent a special or an ordinary resolution is required pursuant to the Companies Act 2006 or otherwise, the relevant Company shall prepare and circulate to its shareholder/member a draft resolution for consideration and, if thought fit, approval by that shareholder/member. The Company's shareholder/member shall approve any resolution which is in line with a consent or approval of the Council.

Each Company shall ensure that the Board chair and and/or any employees of each Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and, subject to any lawful constraints on being able to do so, shall answer questions put by the Council and provide information regarding the activities of each Company as reasonably requested.

The Council may nevertheless establish a group (the **Shareholder Group**) as a means of:

- 4.1.5 governing its relationship with the Companies;
- 4.1.6 communicating its views to each Company; and
- 4.1.7 evaluating the effectiveness of each Board and the delivery of a Company's performance against strategic objectives.

The Council may approve and amend from time to time terms of reference in respect of the Shareholder Group which set out its structure, parameters and rights. Those terms of reference shall be circulated to each Company and each Company shall treat any request from the Shareholder Group as a request of the Council.

Each Company shall report twice a year to the relevant scrutiny committee on their Business Plan accounts in accordance with the format outlined at Schedule 6.

5 DECISION-MAKING

Except as set out in clause 0, insofar as a matter relating to a Company is a Reserved Matter, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council.

Clause 0 shall not apply in connection with any decision or action relating to a Reserved Matter:

- 5.1.1 approved in a Business Plan then in force;
- 5.1.2 which has been properly delegated in accordance with this Agreement to a particular Board or person; or
- 5.1.3 to the extent the same decision has been taken by the Council in accordance with an agreement between the Council and the relevant Company.

For the avoidance of doubt, a Board may make any decision in relation to, or undertake, any matter which is not a Reserved Matter where that matter is outside the terms of the relevant Company's Business Plan provided that the matter is only outside the terms of the Business Plan by reason of potential additional expenditure which itself does not exceed any threshold in the Reserved Matters.

Any variation to the list of Reserved Matters must be approved by the Council in writing. The Reserved Matters may be varied and/or replaced in part or entirely by the Council at its absolute discretion. Upon the Council giving notice in writing to the Company/ies concerned that such a variation or replacement has occurred, this Agreement and Schedule 4 shall be deemed modified from the date specified in the varied or replacement schedule.

If any agreement between the Council and a Company is validly varied in accordance with its terms, the relevant sections of its Business Plan shall be deemed amended on and with effect from the date of the variation of the agreement to the extent (but only to the extent) such amendment is necessary

to ensure that the Business Plan is fully consistent, and does not conflict, with the terms of that agreement.

Except as set out in above in this clause 5, a Board shall have full and complete authority, power and discretion to direct, manage and control its Company and the Business, affairs and properties of that Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.

Each Company agrees that it shall, in a proper and efficient manner:

5.1.4 carry on and conduct its Business and affairs in accordance with:

- (a) this Agreement;
- (b) its Business Plan then in force;
- (c) its Articles;
- (d) all laws relating to companies as amended from time to time;
- (e) sound governance and good business practice; and

use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its Business properly and effectively and in accordance with the Business Plan then in force.

In consideration of the covenants to be observed and performed by each Company as set out in Schedule 2, the Council hereby covenants with each Company in the terms set out in Schedule 1

In consideration of the covenants to be observed and performed by the Council as set out in Schedule 1, each Company hereby covenants with the Council in the terms set out in. Schedule 2

Each of the covenants in clauses 0 and 0 shall be construed as a separate covenant and shall not be limited or restricted by reference to or inference from the terms of any covenant or any clause of this Agreement.

6 BOARDS

The Board of each Company shall be composed of such persons and shall conduct their dealings in accordance with their Articles and this Agreement provided that the Council may by notice in writing nominate any person as a Director and, if so nominated, the relevant Company shall appoint the nominee as a Director.

On the nomination of a Director to the Board of a Company (whether by the Council or otherwise), the person nominated shall provide a notice of appointment of a nominated Director in the form or substantially in the form contained in Schedule 1.

The Council may from time to time direct a Company by notice in writing to establish one or more committees of the Board of that Company for particular purposes and may also from time to time direct a Company by notice in writing to terminate the existence of such a committee.

7 THE COMPANY'S REPRESENTATIVE

The Company's Representative shall be the person nominated in writing by each Company from time to time to act in the name of the respective Company for the purposes of this Agreement. Any reference to a communication with a Company, in this Agreement, shall be to the respective Company's Representative.

From time to time each Company's Representative may appoint one or more representatives to act for the respective Company generally or for specified purposes or periods. Immediately after any such appointment is made, the Company shall give written notice thereof to the Council.

8 THE COUNCIL'S REPRESENTATIVE

The Council shall appoint the Council's Representative to act in the name of the Council for all purposes connected with this Agreement.

The Council shall on or before the commencement of this Agreement inform the Companies in writing of the identity of the Council's Representative.

In the event that the Council intends to replace the individual acting as the Council's Representative, it shall give each Company's Representative reasonable notice in writing of its intention so to do together with details of a new Council Representative and when the replacement is to take effect.

Any notice, information, instruction or other communication given to the Council's Representative by the Company shall be deemed to have been given to the Council. Any notice, information, instruction or other communication given by the Council's Representative to the Company shall be deemed to have been duly authorised by the Council.

The Council shall ensure that the Council's Representative is available to meet the Company's Representative at all reasonable times and upon reasonable notice.

9 A COMPANY'S IDENTITY

It is hereby acknowledged by the Council that the identity of a Company shall be referred to in all the Council's correspondence and in all documents and stationery produced by the Council when it is for or on behalf of that Company.

10 FINANCE AND RETURNS

If any Company requires debt or grant funding, it shall endeavour to seek and obtain such funding from the Council on such terms as the Company may agree with the Council. The Council may also require security for any funding provided. If the Council is unable or unwilling to provide such funding, then the Company may seek third party funding.

Subject to the terms of the Business Plan relating to a Company, the terms of any contract between the Council or other legal person controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015) and a Teckal Company, and law, income and receipts of that Company shall be utilised in the following order of priority:

- 10.1.1 first, in payment of amounts owed to creditors;
- 10.1.2 second, to the extent required, in payment of amounts owed to senior debt providers (if any), including principal, interest accrued thereon and any other associated costs such as interest breakage costs and premature pre-payment fees;
- 10.1.3 third, in repayment of any loans made by the Council and any interest accrued thereon;
- 10.1.4 fourth, by way of retention to the Company's reserves; and

10.1.5 fifth, to the Council by way of distribution of profit.

A distribution of profits to the Council shall require the approval of the Council:

10.1.6 where the distribution of profits is a final dividend, within 10 Business Days of the draft annual accounts for the Financial Year in question being agreed; and

10.1.7 where the distribution of profits is not a final dividend, within 10 Business Days of the Board recommending the same to the Council.

An Approved Distribution is a distribution which has received Council approval within that time period and the date on which that approval is given shall be the **Approval Date**.

The Company shall credit an Approved Distribution to the Council within 10 Business Days of the Approval Date. Payments will be in cash, unless a distribution was expressly approved by the Council in specie.

11 DEALINGS IN SHARES AND NEW SHAREHOLDERS

No Company shall create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is permitted under this Agreement and its Articles.

Admitting a person as a new shareholder or member of any Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should a Company wish to admit a new shareholder or new member, the Board of that Company must procure that a Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.

The Council shall procure that any new Company shall execute a Deed of Adherence to this Agreement as soon as reasonably practicable following incorporation of that Company and in any event prior to it starting business operations.

12 DISPUTE RESOLUTION

Save as otherwise herein expressly provided in this Agreement, any disputes or differences arising between the parties as to their respective rights duties or obligations or to any other matter or thing in any way arising out of or connected with the subject matter of this Agreement shall be in the first instance dealt with by senior representatives of the parties with authority to settle the dispute, such representatives to meet 14 days after the receipt by the parties of a written request from one party to the others and shall in good faith endeavour to resolve the dispute.

If the dispute is not resolved at the meeting referred to in clause 0, the parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other parties to the dispute requesting mediation. A copy of the request should be sent to CEDR. The mediation shall start not later than 28 days after the date of the ADR notice. The commencement of mediation shall not prevent the parties commencing or continuing arbitration proceedings.

13 TERMINATION

Subject to clause 0 this Agreement may be terminated by the Council serving no less than six months' written notice on all other parties or, if termination is in respect of one Company only, six months' written notice on that Company.

The Council may terminate this Agreement immediately where required in accordance with any law.

Insofar as any of the rights and powers of any party provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

Insofar as any of the obligations of any party provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

Where a Company is to be wound up and its assets distributed, the parties shall endeavour to ensure that:

- 13.1.1 all existing contracts of such company or companies are performed to the extent that there are sufficient resources;
- 13.1.2 the company or companies shall not enter into any new contractual obligations;
- 13.1.3 the company or companies is dissolved and its assets are distributed as soon as practical in accordance with clauses 13.1.4; and
- 13.1.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the company or companies and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the company or companies and the party who is/are returning it.
- 13.1.5 In the event of any Company being wound up, the assets of such company remaining after payment of all debts and liabilities of such company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders or members of such company.

14 PREVENTION OF BRIBERY

Each Company:

- 14.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;
- 14.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

Each Company shall:

- 14.1.3 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (a) within 5 Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of such company) compliance with this clause 14 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Council may reasonably request.

Each Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.

If any breach of clause 0 is suspected or known, the party in breach must notify the Council immediately.

If any Company notifies the Council that it suspects or knows that there may be a breach of clause 0, such company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

The Council may terminate this Agreement or any other agreement with the Company concerned by written notice with immediate effect if any such Company or Director, officer, employee, adviser or representative of such Company (in all cases whether or not acting with such Company's knowledge) breaches clause 0.

Any notice of termination under clause 0 must specify:

- 14.1.4 the nature of the Prohibited Act;
- 14.1.5 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 14.1.6 the date on which this Agreement shall terminate.

Any dispute relating to:

- 14.1.7 the interpretation of this clause 14; or
- 14.1.8 the amount or value of any gift, consideration or commission;

shall be determined by the Council and its decision shall be final and conclusive.

Any termination under clause 0 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

15 CONFIDENTIALITY

Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:

- 15.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;
- 15.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;
- 15.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
- 15.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 0.

All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 15.

Each Director shall be entitled to disclose to the Council, all information to which the Council is entitled pursuant to this Agreement from time to time.

The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 0 in respect of such Confidential Information as if they were parties.

Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

16 FREEDOM OF INFORMATION

The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other parties for information to enable the other parties (where required) to comply with their information disclosure obligations.

Subject to clause 0, where a Company receives a request for information under either the FOIA or the EIR which it is holding on behalf of any other party, it shall:

- 16.1.1 transfer the request for information to the relevant party (or such other party as it is otherwise agreed between the parties is the best person to deal with such request) as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
- 16.1.2 provide the relevant or other party with a copy of all information in its possession or power in the form that the relevant or other party requires within ten Business Days (or such longer period as the relevant or other party may specify) of the relevant or other party requesting that information; and
- 16.1.3 provide all necessary assistance as reasonably requested by the relevant or other party to enable the relevant or other party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

Where the Council receives a request under FOIA or EIR which relates to the operations of a Company, it shall notify the relevant Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The relevant Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Days response period referred to above has passed.

Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:

- 16.1.4 is exempt from disclosure; or
- 16.1.5 is to be disclosed in response to a request for information.

Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:

- 16.1.6 without consulting with the other parties where it has not been practicable to achieve such consultation; or
- 16.1.7 following consultation with the other parties and having taken their views into account.

17 DATA PROTECTION

Each party shall (and shall procure that any of its staff involved in the operation of this Agreement) comply with any notification requirements under the Data Protection Legislation, and each party shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

18 OTHER LEGISLATION

All parties shall comply with their obligations under the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Computer Misuse Act 1990 insofar as the requirements of this Agreement give rise to obligations under those Acts.

The Council shall provide the Companies with such information as the Companies may reasonably require to satisfy itself that the Council is complying with the obligations referred to in clauses 14, 17 and 18.

All parties shall provide each other with all such assistance as they may reasonably require to enable them to comply with the obligations referred to in clauses 14, 17 and 18.

No party shall knowingly do anything which places another party in breach of its obligations under clauses 14, 17 and 18.

19 UNLAWFUL FETTER ON A COMPANY'S POWERS

Notwithstanding any other provision contained in this Agreement, a party which is a corporate body shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

20 FURTHER ASSURANCE

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

21 ASSIGNMENT AND SUB-CONTRACTING

This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

This Agreement shall be binding on and shall endure for the benefit of each party's successors.

22 WAIVERS AND CONSENTS

A waiver of any right or remedy under this Agreement or by law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

23 GOOD FAITH

The parties agree that any activities or negotiations undertaken between them pursuant to this Agreement shall be undertaken in good faith.

24 RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

25 SEVERANCE

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

26 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

27 THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

28 NOTICES

Delivery

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

28.1.1 in writing;

28.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

28.1.3 sent to:

(a) the Council at:

Guildhall, High Street, Bath, BA1 5AW

Attention: Council Representative

(b) any other party

Guildhall, High Street, Bath, BA1 5AW/9-10 Bath Street, Bath BA1 1SN

Attention: Company Representative

Receipt

Any notice or other communication shall be deemed to have been received:

- 28.1.4 if delivered by hand, at the time it is left at the relevant address;
- 28.1.5 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 28.1.6 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 28.1.4 or clause 28.1.6 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

Any notices served on either of the Parties by hand or facsimile, shall be deemed to be served on the same working day if delivered or transmitted before 17.00 but if after 17.00 then on the next Business Day and if sent by prepaid first class post shall be deemed to have been received by the addressee within 48 hours of posting.

Any party may notify to all other parties in writing from time to time by no less than five Business Days' notice a different address in the United Kingdom or contact name for the giving of notices or communications.

29 ENTIRE AGREEMENT

This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.

Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

- 29.1.1 all rights and remedies which, but for this clause 0, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and
- 29.1.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 0, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 0 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

30 CONFLICT WITH THE ARTICLES

If any provision of this Agreement is inconsistent with a provision of the Articles of any Company, then the terms of this Agreement shall prevail and the member(s) of such Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

31 COSTS AND EXPENSES

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

32 SET-OFF

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

33 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

34 AGREEMENT REVIEW

The Council (including the Council's Representative) and the Company (including the Company's Representative) shall meet at least every twelve months to review the overall operation of this Agreement and in particular the success of the Companies in meeting their objectives more generally and to discuss if and how the Companies might assist the Council with the provision of further housing and other services. Such meetings shall be held at reasonable times.

The Council shall take minutes of the review meetings and a copy of the minutes shall be circulated to the Companies within 10 Business Days of the meeting.

35 VARIATION OF AGREEMENT

The provisions of this Agreement may only be varied at any time by the agreement of all parties, provided that any such variation shall be recorded in writing signed on behalf of all parties and appended hereto.

36 VALUE ADDED TAX

All payments by any party pursuant to this Agreement shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which the payment is consideration and any such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

37 LAW

This Agreement shall be governed and construed according to English law.

Save to the extent that this Agreement otherwise provides, each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

SCHEDULE 1 – COVENANTS BY THE COUNCIL

The Council, shall to the extent it is permitted to do so under (i) its constitution and (ii) all laws applicable to local authorities:

- 1 provide such advice and assistance as each Company may reasonably request in the selection and appointment of auditors, bankers, solicitors, other consultants and contractors of each Company;
- 2 provide such advice and assistance as each Company may reasonably request in the preparation of a Business Plan, financial budgets, statements and cash flows for each Company;
- 3 consider the Business Plan when requested to do so for the purposes of approval, of each Company; and
- 4 respect the confidentiality of all material negotiations (otherwise than such as is in the public domain) and only disclose information pertaining to each Company with the prior agreement of the relevant Company unless required to do so by law or at the direction of a court with competent jurisdiction.

SCHEDULE 2 – COVENANTS BY EACH COMPANY

Each Company shall:

- 1 comply with all reasonable requests of relevant statutory bodies and agencies;
- 2 so far as reasonably practicable, adopt all best practice recommendations in regard to its market and adopt the Council's policies and procedures in relation to these matters having regard to the local conditions of the operation of the Council;
- 3 provide, and authorise or instruct its auditors to provide, to the person who is for the time being the auditor in relation to the accounts of the Council, such information and explanation about the affairs of the Company as that person may require for the purposes of the audit of the local authority's accounts;
- 4 only appoint contractors and consultants in accordance with the Council's standing orders for procurement provided that the Directors shall have the same status within those as appropriate to equivalent Council officers;
- 5 report to the Council upon its financial and operational functions in such form and at such time as shall be reasonably required by the Council;
- 6 provide all information upon any aspect of its affairs requested from time to time by the Council and to co-operate fully with any investigations with its affairs initiated by the Council from time to time;
- 7 have mentioned on all business letters, notices and other documents of the Company the fact that it is a company controlled by the Council, within the meaning of Part V of the Local Government and Housing Act 1989;
- 8 not pay to a Director who is also a member of the Council, remuneration in excess of the greatest amount which would for the time being be payable by the Council in respect of a comparable duty performed on behalf of the Council, less any amount paid by the Council in respect of that duty to the Director in question, nor to pay any such amounts to Council officers who are Directors of the Company;
- 9 not to pay any remuneration in excess of any remuneration permitted under a Remuneration Policy provided that any Remuneration Policy has had the prior approval of the Council (in its absolute discretion);
- 10 not to pay a Director any sum in excess of any payment permitted under a Board Director Payment Policy provided that any Board Director Payment Policy has had the prior approval of the Council (in its absolute discretion);
- 11 in respect of expenditure on travelling or subsistence in connection with the carrying out of a duty on behalf of the Company, pay to any Director, whether or not he or she is a member of the Council, remuneration in excess of the maximum amount of travelling or subsistence allowance which would for the time being be payable to a director being a member, by the Council, if the relevant duty were an approved duty for the purposes of Section 174 of the Local Government Act 1972;
- 12 not publish any material which the relevant authority would be prohibited from publishing by section 2 of the Local Government Act 1986 (prohibition of political publicity);
- 13 where a Director becomes disqualified for membership of a local authority, otherwise than by being employed by a local authority or a controlled company of that local authority, make such arrangements as may be necessary for a resolution to be moved for his removal in accordance with section 168 of the Companies Act 2006; and

- 14 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, provided that the Company shall not be required to provide information in breach of any enactment, or of an obligation owed to any person.

SCHEDULE 3 – DEED OF ADHERENCE

THIS DEED is made on

BY ● of ● (company number ●) whose registered office is at [Guildhall, High Street, Bath, BA1 5AW] (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Shareholder Agreement dated ● made by (1) Bath & North East Somerset Council, (2) LATCO (the **Agreement**)

THIS DEED WITNESSES as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by a [HoldCo (as defined in the Agreement)] [shareholder], as if the Covenantor were a party to the Agreement.

- 2 This deed is governed by the laws of England and Wales.

IN WITNESS WHEREOF this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Insert correct execution block]

Executed as a deed by)	
●)	
acting by a director and a director/ Secretary)
)	Director
)	
)
)	Director/Secretary

SCHEDULE – List of parties to Shareholder Agreement including those who have executed earlier deeds of adherence

SCHEDULE 4 – RESERVED MATTERS

Version: 01
Date in force: Date of this Agreement

Reference to a "Company" shall be to the relevant Company (as appropriate).

No	Reserved Matter	Special Reserved Matters
	Constitution of the Company	
1.	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company	
	Officers and shareholders of the Company	
2.	Appointing any Director other than a Council appointed Director and approving the terms of appointment (including any remuneration terms)	
3.	Removing any Director (including any terms on which a Director is removed from office as Director) other than Council appointed Directors	
4.	Admitting any further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable)	Referral to Cabinet
5.	Appointing or removing of the chair of the Board (except where the chair is absent in which case the Board shall appoint an alternate chair)	
	Future direction and development of the Company	
6.	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle	
7.	Amalgamating or merging with any other company or business undertaking	Referral to Cabinet
8.	Selling or disposing of any part of the business of the Company	
9.	Adopting or amending the Business Plan of each respective Company and any in-year changes	
10.	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan	
11.	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).	Referral to Cabinet
12.	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 [£●] but not exceed [£●] per annum	
13.	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 [£●] per annum	Referral to Cabinet

No	Reserved Matter	Special Reserved Matters
14.	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of a Company	
15.	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable)	
16.	Bidding for or entering into any contract for the delivery of works or services outside the administrative boundary of the Council	
	Management of the business of the Company	
17.	Changing the Company's registered office	
18.	Changing the Company's name	
19.	Creating or agreeing to create a charge, security or Encumbrance over the Company's assets, shares or income	
20.	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council	
21.	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company	
22.	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which the Board reasonably expects will exceed [£●] but not exceed [£●] per annum	
23.	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which the Board reasonably expects will exceed [£●] per annum	Referral to Cabinet
24.	Giving notice of termination of any arrangements, contracts or transactions the total value of which the Board reasonably expects will exceed [£●] but not exceed [£●] per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company	
25.	Giving notice of termination of any arrangements, contracts or transactions the total value of which the Board reasonably expects will exceed [£●] per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company	Referral to Cabinet
26.	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company	
27.	Changing the Company's auditors or bankers	
28.	Making any borrowing	
29.	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a Company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading)	

No	Reserved Matter	Special Reserved Matters
30.	Changing the Financial Year of the Company	
31.	Increasing or reducing the amount of its issued share capital, grant any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital (where applicable)	
32.	Declaring or paying any end of year dividend of the Company (where applicable)	

SCHEDULE 5 – NOTICE OF APPOINTMENT OF A NOMINATED DIRECTOR

To: ● Limited, Guildhall, High Street, Bath BA1 5AW

[Date]

Dear Sirs

● Limited (the Company)

I acknowledge and agree that:

- 1 my appointment as a director of the Company is made pursuant to and is subject to the terms and
conditions set in the Shareholder Agreement dated ● (as amended) (**Agreement**) and the
Company's articles of association (**Articles**);
- 2 I am expected to and shall attend Board meetings and general meetings (where requested) of the
Company;
- 3 I shall not, whether during my appointment or after its termination, except in the proper course of my
duties or as required by law, use or disclose, and shall use all reasonable endeavours to prevent the
use or disclosure of, any trade or business secrets or any information concerning the business or
finances of the Company or of any dealings, transactions or affairs of the Company or any client,
customer or supplier of the Company which come to my knowledge during the course of my
appointment and shall comply with the provisions of clause 15 (Confidentiality) of the Agreement as
if I were a party to the Agreement. I shall, however, be entitled to disclose information to my
appointor as permitted under the Agreement;
- 4 my appointment as director shall automatically cease in relation to the Company if article [22]
(*Termination of Director's appointment*) of the Articles applies. Without limitation to this, in signing
this letter, I acknowledge that my office is subject to the terms of the Agreement and the Articles and
may be determined as permitted under the terms of the Agreement and the Articles and that upon
such termination, I shall vacate office in relation to the Company forthwith without raising any claim
whatsoever against the Company; and
- 5 on termination of my appointment, I shall promptly return to the Company all papers and property of
the Company which are in my possession or under my control.

Executed as a deed by _____)
[• INDIVIDUAL'S NAME] _____)
 in the presence of _____)

Signature: _____

Name of witness: _____

Address:

Occupation of witness:

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of **BATH & NORTH**)
EAST SOMERSET COUNCIL)
Was hereunto affixed in the presence of:)
)
)
)
)
)
)
)
) **Authorised signatory**

Executed as a deed by)
LATCO)
acting by,)
a director/duly authorised signatory,)
in the presence of)
)
) **Director/Duly authorised signatory**

Signature:

Name of witness:

Address:

.....

Occupation of witness:

Appendix C

Ethical Walls Policy and Procedure

Introduction

Bath & North East Somerset Council have created companies which are separate organisations to the Councils. This means they are all separate legal entities.

The Council therefore has officers working for or as Directors of these different entities. This has potential for conflict due to the conflicts of interest that could arise in terms of who is acting and representing each entity. An ethical wall helps reduce this conflict. An ethical wall is an information barrier within an organisation erected to prevent communication that could lead to the disclosure of information which is confidential to one organisation or the other. Ethical walls are also known as Chinese walls; cones of silence; screens or firewalls and exist in the financial service sector between those who are privy to confidential information that could affect share values and those who take/influence investment decisions, in the media between journalists and advertising executives and in law firms where different solicitors are acting for different clients on the same matter.

A small number of officers and members, mainly those holding executive, senior management, statutory, legal, financial, regulatory and planning posts, may face situations where they become aware of conflict or potential conflict between the council and a council entity. There is a need for officers and members in these posts to maintain vigilance in identifying these situations.

When are they created?

An ethical wall is put in place when the Monitoring Officer becomes aware or made aware of potential conflict. The Monitoring Officer puts in place an ethical wall through creating an active ethical wall document which is circulated to councillors, the appropriate management team and all those who may be affected by the wall or may come into contact with it in carrying out their role. The document sets out who is on which side of the wall, what their role is and how potential conflict should be avoided.

What should you do when an ethical wall is in place?

People on either side of the wall should treat and behave towards each other as if they were an external organisation when dealing with the issue only. In all other matters they should continue to work and behave towards each other normally. The following points provide helpful guidance of what to do when an ethical wall is put in place:

- **Files and electronic correspondence** - neither party should access information held by the other and appropriate restrictions should be put in place with ICT. You should have and use email signatures for the organisation you are writing on behalf of and make this clear in phone calls and discussions.

- **Officer advice** – officers should only advise members and officers on their side of the wall. Officers may not be able to report to their normal manager on the issue if they are on the other side of the wall and line managers should respect when an ethical wall is in place and that employees may not be able to disclose information they become aware of.
- **Committee reports** – reports to committees must be in the name of and signed off by officers on the correct side of the wall.
- **Meetings** – officers and members should not be present at meetings when they are dealing with the issue on the other side of the wall.

Active ethical walls will be kept updated by the Monitoring Officer and when an issue is concluded, the Monitoring Officer will take down the wall through communicating this to all affected staff.

Ethical Walls Procedure

This procedure is designed to be read alongside the Protocol on Councillor Officers Relations.

It is recognised that there may be rare occasions, most commonly in a regulatory context, or where a council owned/influenced company/organisation context has been established where it is not possible to reconcile the interests of the two parties.

Such conflicts shall be managed by ensuring that relevant officers and councillors working for each side are ring fenced from each other to ensure that due regard is taken of the respective and conflicting duties and interests, and the need for certain matters to remain confidential to the individual council entity.

In all cases officers and members should always err on the side of caution and seek advice, as it is much better to deal with, and plan for potential conflict at an early stage. If there is a delay when actual conflicts are identified, it may be that too many officers and members are already acting for one side or the other and/or the erection of the Ethical Wall may be too late. The creation of an Ethical Wall does require a level of maturity and respect from those on either side of it. For instance, it is not uncommon for a manager to be on one side and a direct report on the other.

If there is a conflict or significant risk of a conflict, between the Council and a council entity, the officer or member must not act for both, except where the council and the council entity are expressly pursuing the same common objective. In all cases of conflict or potential conflict, a decision should be sought immediately from the Monitoring Officer. The Monitoring Officer in deciding whether there is a conflict, or whether the officer or member can act for multiple organisations, will ensure that the overriding consideration is the best interests of the individual organisation, and in particular, whether the benefits of the officer or member acting for all of them outweighs the risk.

If the Monitoring Officer feels that there is a risk of conflict, or that the interest of the organisations is not best served by an officer or member acting for both, they will invoke this procedure.

Procedure

When a conflict or potential conflict is identified, the officer or member should alert the Monitoring Officer or the deputy.

The Monitoring Officer will provide advice to the officer on whether there is a conflict and in all cases alert the Chief Executive. The Monitoring Officer will maintain an audit trail of their actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified, the Monitoring Officer (in consultation with the relevant members/SMT officers) will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officer will alert those on the list, SMT members, relevant lead members and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the council entity, and the officers representing it, with full regard to the issue in question, as if they were an external organisation. That is information supplied by the other party should be thoroughly and critically examined, and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence, as opposed to verbal communications; as such documents could later be relied upon in legal action.

It should be agreed where files and electronic correspondence should be held, and neither party should access information held by the other. Appropriate access restrictions will be established by ICT Services for information held electronically.

Officers should only advise members and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the wall, and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question, and does not extend to any other areas of work.

When the issue in question has been successfully concluded, the Monitoring Officer should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.

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Appendix D

Protocol for scrutiny of shareholder decision making for B&NES Council Trading Companies

Background

On 14 September 2017 Council agreed the principles and structures set out in the **Protocol For Governance Arrangements of Council Trading Companies**. Council also required that legal advice as to how and when a greater scrutiny mechanism can be achieved for decisions made by, or in consultation with, the Leader in his or her role as shareholder be obtained

The legal advice provided recommends the development of a protocol which provides information to members on a regular basis with the aim of minimising the need to exercise specific call in powers.

This protocol seeks to enable the Council's companies to make decisions swiftly and with certainty in order that they can compete in the marketplace with their private sector peers but also to ensure that members of the Council have sufficient information to be reassured that the companies are being properly governed and public money is safeguarded.

The starting point for scrutiny of all decisions taken by the Council as shareholder whether through the leader, cabinet portfolio holder or officer is that they are always capable of being called in and scrutinised in the usual way unless made pursuant to Rule 15 (General exemption) or Rule 16 (Special Urgency) of the Access to Information Procedure Rules in part 4B of the Council Constitution

This protocol recognises that it is unnecessary to exercise the powers of call in where regular reports are provided to the relevant scrutiny body. **Table 1** provides a flowchart to enable members to understand the routes to access information regarding Council Trading Companies which the Council impose on the Company as shareholder through the Shareholder Agreement.

Regular reports

Regular reports will be provided by Council Trading companies and members will be kept up to date on the progress of Council companies, by having annual reports to Council and Audit Panel and 6 monthly performance reports to the relevant Scrutiny committee.

The Council's Commercial Director will be responsible for this reporting and will agree with the PDS chair, the format of the draft report detailing the matters each council company will be required to report. Included in the regular reports will be a list of all decisions taken by the Council in its capacity as shareholder, which will also be published in the weekly list.

Group Leaders will be informed on a confidential basis of the Council Companies' plans and of Reserved Matters decisions required of the Council in its role as Shareholder. The

terms of reference of that body are set out in Appendix 6 of the Protocol for Governance Arrangements of Council Companies

Finally the company directors will be invited to present the outcomes achieved by the relevant trading company annually to the relevant scrutiny body. This shall be timetabled into the annual programme of work.

Democracy and commercialisation

It should be recognised that the Council companies need the freedom to operate in a competitive environment and commercial confidentiality and swift decision making are important for these companies to succeed.

The benefit to the Council to be derived by these companies generating income and paying dividends does entail an acceptance of commercial risk.

The Council's Shareholder Group, together with oversight of Council decision making as shareholder by the Council's scrutiny bodies via reports and meetings with the company directors should provide the necessary transparency and democratic oversight

The Protocol For Governance Arrangements of Council Companies provides for the Council to regulate the actions of its trading companies via shareholder agreements between the Council and these companies.

A shareholder decision on a reserved matter made by the Leader is an executive decision and will be recorded as a single member decision. A shareholder decision that is a special reserved matter is referred to Cabinet for a decision and therefore subject to the call in process in the usual manner.

Any decision to be taken by the Hold Company (once formed) or by the shadow Hold Company will be an officer decision and recorded in the officer decision register and subject to scrutiny in the usual manner.

Concerns

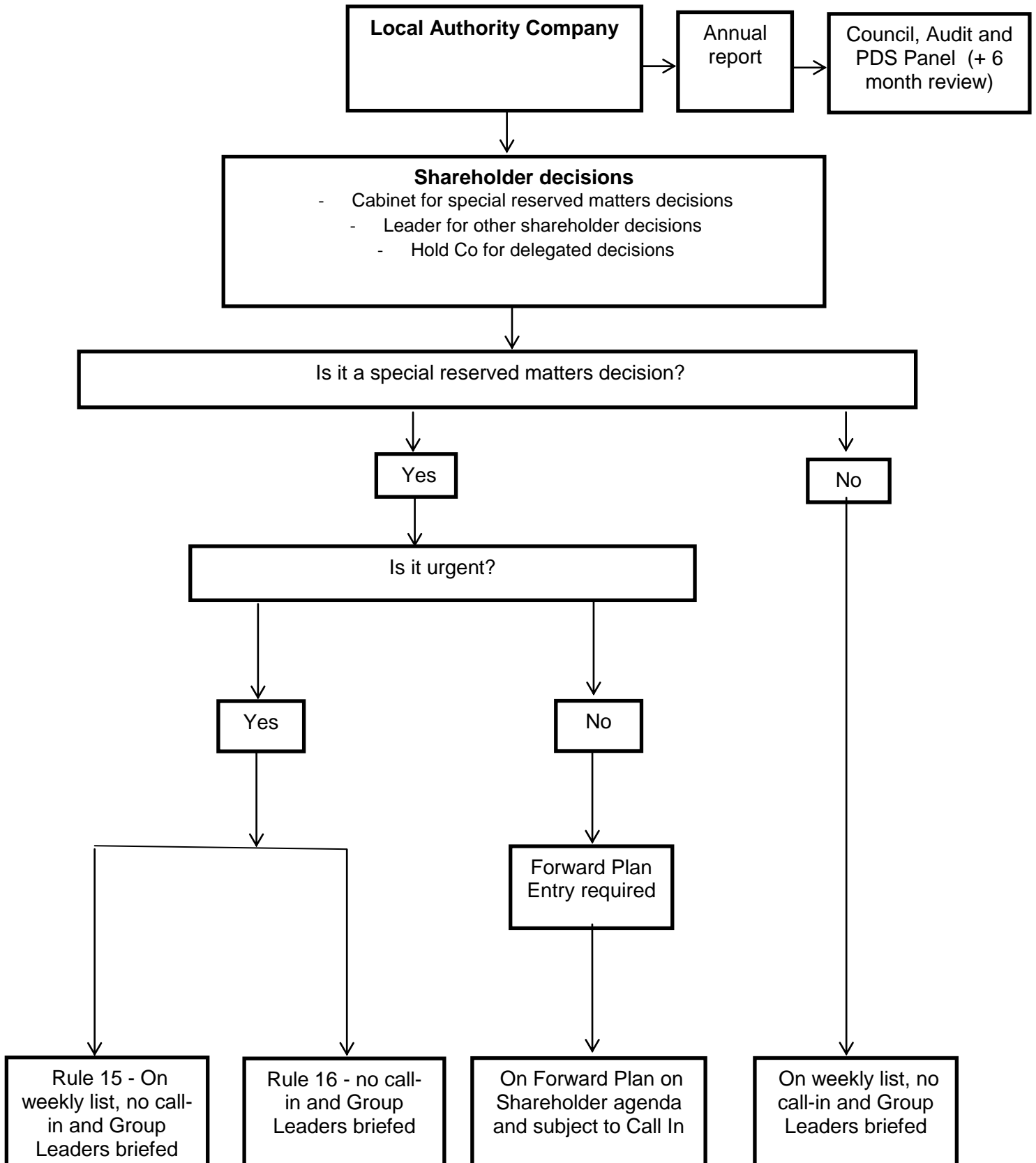
Where any member has a specific concern about a company, they should raise this with the Chair of the relevant Scrutiny body. The Chair should then raise that with the relevant company at the meetings with the company's directors, with a view to resolving any issues in a practical way. In exceptional circumstances, a member can use the councillors call for action to require the scrutiny body to formally add this matter to its agenda.

Review

The council shall operate this protocol for a period of 12 months after which time the operation of the protocol will be reviewed, with any recommendations being considered by Cabinet and any recommendation for changes being brought back before Council in 2019.

Table 1

Scrutiny of Company Decision making



Appendix E

GROUP LEADERS BRIEFING – TERMS OF REFERENCE

To receive on a confidential basis, reports on decisions made by the Council as shareholder of Council companies in accordance with the scrutiny arrangement provisions in the Protocol on Company Governance.

The Committees span of responsibility

All Companies where the Council holds a controlling share irrespective of the type of company involved.

All shareholder decisions whether specific reserved matters or not.

Membership

The Committee shall comprise one Member from each political group (usually the Group Leader)

Confidentiality Requirement

The Council companies are separate legal entities from the Council.

The Shareholder will be required to make decisions in relation to matters that are commercially confidential to the companies involved.

Councillors attending the Group Leaders Briefing meeting are subject to the same duty of confidentiality in relation to the information they receive as the shareholder, and would open the Council to challenge if disclosure of such confidential information resulted in financial loss or damage to the commercial interests of the company involved or any third party.

Appendix F

Amendments required to the Constitution

The Constitution is currently set up to ensure that all executive decisions are put on the forward plan and subject to call-in. All decisions made by the shareholder will also be executive decisions and so Part 2, 4B and 4D will require any decision to be included in the Forward Plan and subject to call-in. This could delay urgent shareholder decisions and prevent the companies from operating in as agile a manner as possible. Amendments are therefore requested to ensure the effective working of the Constitution in relation to council companies, so that any council company is able to act quickly and decisively without unnecessary barrier or uncertainty.

Part 2 Article 13

The suggested wording is recommended to ensure that company shareholder decisions are not key decisions and so do not need to comply with the key decision requirements, eg the key decision must be on the forward plan for 28 clear days before the decision can be taken:

13.5 ...The definition of key decision does not apply to proposals or decisions of the Leader acting in their capacity as Shareholder of a Local Authority Company owned or operated by the Council.

Part 4B and Part 4D

The suggested highlighted wording is recommended to be added:

PART 4 B Rule 1 - SCOPE

These Rules apply to all formally convened meetings of the Council, its Committees and their sub committees, Overview and Scrutiny Panels and sub bodies thereof, Area Committees and their sub committees (if any), the Standards Committee, the Cabinet and its committees (together called "meetings"). It does not apply to proposals and decisions of the Leader acting in their capacity as Shareholder of a Local Authority Company owned or operated by the Council.

PART 4 D Rule 1 - CALL-IN OF EXECUTIVE DECISIONS

Elected members who do not sit on the Cabinet have the right to request a "call-in" of an executive decision which has been made by the Cabinet, or a person or body to whom the power to make executive decisions has been delegated, but not yet implemented.

These decisions could be made by;

- *the Cabinet*

- *a Cabinet Member,*
- *a committee of the Cabinet*
- *an Officer taking a key decision acting on delegated authority from the Cabinet*
- *an area committee*
- *a body under joint arrangements*

BUT NOT the decisions of quasi-judicial or Regulatory Committees or proposals and decisions of the Leader acting in their capacity as Shareholder of a Local Authority Company owned or operated by the Council.

PART 4 D-1 Rule 5 – EXCEPTIONS TO “CALL-IN”

The rights under this Procedural Rule shall not apply in the following circumstances:

- *when the executive decision is urgent as defined in the Urgency Procedure Rules within this Constitution;*
- *the effect of the call-in alone would be to cause the Council to miss, or fail to comply with or fulfil, a statutory deadline or duty;*
- *a decision taken under the General Exception and Special Urgency Access to Information Rules [Part 4B, rules 15 and 16];*
- *the effect of the call-in alone would be to cause the Company to miss, or fail to comply with or fulfil, a deadline or duty.*