

Reference Number: CPSC/17/23

Report title: Council-owned 'for profit' organisations	
Report to: Corporate Policy and Scrutiny Committee	
Report author: Councillor Christopher Whitbread, Chancellor of Essex (Cabinet Member with responsibility for Finance)	
Date: 28 September 2023	For: Information
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County Divisions affected: All Essex	

1. Purpose of report

- 1.1 This report provides the Scrutiny Committee with an overview of the Council owned trading organisations. It provides details of the purpose of each organisation and the financial returns from these interests.
- 1.2 The report deals with the shareholder perspective and sets out the assurance processes around these companies.

2. Background

- 2.1 The Council currently has an interest in four organisations which operate potentially for profit. Three of them are wholly owned by the Council. These organisations have been set up for a variety of reasons. A summary of each organisation is shown at Appendix 1.
- 2.2 In addition, there are other organisations where the Council has an interest or involvement, but these are not for profit. These are also shown in Appendix 1 for the sake of completeness, and they are beyond the scope of what the committee has requested.
- 2.3 An entity is defined as an Essex Company if the Council:
 - is a member or shareholder of a company; and limited by guarantee
 - in a position to appoint one or more directors
- 2.4 The Leader of the Council is the Lead Member (Councillor) for all council owned trading organisations. There is guidance in place which sets out our requirements about creating new companies or joining a new company.
- 2.5 The company guidance is designed to:
 - a. ensure there's a clear business case for any proposed investment/acquisition proposal or continued participation, and that they contribute to the achievement of the corporate objectives.

- b. allow us to manage, within a well-defined framework, the performance of the companies that ECC wholly or partly owns.
 - c. minimise the risk of unlawful or unconstitutional decisions or actions.
 - d. enable us to obtain the financial information it needs to comply with our own statutory financial reporting requirements in relation to entities it partly or wholly controls and to manage our exposure to risk.
 - e. provide assurance about transparency and record keeping in relation to our companies.
 - f. set up a shareholder board to have central oversight of companies.
- 2.6 The full company guidance, adopted in 2017, is shown at Appendix 2. Please note that the guidance is being reviewed.

3. Shareholder Board

- 3.1 There is a shareholder board in place which meets annually. The Board members include the Lead Member, the Section 151 Officer (or nominee) and the Monitoring Officer (or their nominee).
- 3.2 Each company has a lead ECC officer who is responsible for managing the relationship between the company and ECC. The lead officer must provide an annual report to the shareholder board.
- 3.3 The shareholder board has focussed on ensuring that risks are managed and that companies are still required. It has been successful in reducing the number of companies significantly.
- 3.4 However, the shareholder board has not traditionally held the conversations about whether or not the company is performing well or whether it is doing what the Council requires. These conversations have been held elsewhere with their own governance and membership. Officers are working on a proposal to bring this into one place and reconstituting the shareholder board.

4. Background to the Company and Financial returns

ECL (Essex Cares Ltd)

- 4.1 The company operates social care services. It was created about 15 years ago when ECC's internal provider service was transferred to the company. It continues to provide most of its services for the Council, but it has successfully won contracts with some other local authorities, most notably on the south coast and in east London boroughs. It has four subsidiary companies, three of which are purely for pension liability purposes.
- 4.2 This company does provide a dividend to the Council as shareholder. There is a dividend policy in place, which states that ECL will pay the highest of either of 50% of Distributable profits or £900k to ECC each financial year.

- 4.3 To date, £3.4m of dividends have been paid over the last 4 years, with £1.9m expected for 2022/23 and 2023/24.

Essex Housing Development LLP

- 4.4 This company acquires land, frequently from ECC, and develops it for housing to help address housing need throughout the county by building high quality specialist, private and affordable homes.
- 4.5 This LLP does not currently provide a dividend to the Council as shareholder.
- 4.6 A dividend policy is being developed.
- 4.7 However, the Council makes credit facilities available to Essex Housing at an interest rate that is reflective of the market and complies with the rules about subsidy control. For development loans this is set at Public Works Loan Board (PWLB) 'maturity' new loan rate at the time of each loan advance, plus 4.5%.
- 4.8 Seax Trading Limited (see below) is a 1% partner of Essex Housing and 1% of any distribution from Essex Housing is reflected in their year-end accounts.

Medtech Accelerator Ltd

- 4.9 The Council holds 500,000 ordinary £1 shares in the company Medtech Accelerator Ltd (this currently represents a 20% holding in the company). This company was set up to facilitate the early-stage development of innovations in the broad area of medical technology (devices, diagnostics, software and eHealth) that seek to address unmet clinical needs within the UK National Health Service. It was hoped that some of these would be based in Essex. These investments were made at an early stage of the development of the various businesses, and it is likely that some businesses will succeed, and others will fail.
- 4.10 The Council has not received a dividend to date and is not expected to over the medium term.

Seax Trading Ltd

- 4.11 This company was established to broaden the Council's commercial opportunities by enabling the Council to trade some of its services with the private sector via a limited company for a financial return. The only service currently using the company is Place Services, an in-house council service. Employees in Place Services generate the sales and the company contracts with the business for the provision of the services. The work is carried out by ECC employees who recharge their time to the company. The company keeps a margin to cover its operating costs.
- 4.12 In the 5 years since starting to trade Seax Trading Ltd (up to 21/22) has been used to generate approximately £500,000 of income for the Council (specifically

Place Services), with the last 3 years generating an average of £135,000 of income per annum that would not otherwise have been available.

- 4.13 This company does not currently provide a dividend to the Council as shareholder, but it does provide the opportunity for traded services to do work which they otherwise wouldn't be able to do.

5. Reviews undertaken to date

- 5.1 There are several reviews underway within the area, and therefore a level of change is anticipated.
- 5.2 A review of the shareholder board is also being planned to ensure its effectiveness.

Governance Reviews

- 5.3 Governance reviews have been initiated for both Essex Cares Ltd and Essex Housing LLP. In both cases the Local Partnerships guidance and toolkit is being used as the methodology for the reviews.
- 5.4 The Essex Cares review was concluded in November 2022 and the overall findings confirmed from a shareholder perspective ECL has the appropriate governance and financial arrangements in place. The actions were captured against green and amber RAG status. The evidence gathered concluded no red rated status for action.
- 5.5 It was also recommended the shareholder carries out a refresh of the toolkit on an annual basis and the findings / recommendations reported to the council's Company Board. This fed into a wider review of ECL (see below).
- 5.6 The Essex Housing LLP review has not yet been concluded but initial findings show that there is more to do to strengthen declarations of interest and the board of the LLP will be assessing how it operates against the governance standards.

ECL review

- 5.7 The Leader of the Council requested a strategic review of ECL to assess whether the existing arrangements are delivering the most optimum outcomes for ECC. The scope of the review was jointly agreed between ECC and ECL.
- 5.8 The review is structured around three themes:
- a) Strategic Partnerships – the degree to which ECL and ECC objectives are aligned and how well the two organisations work together and whether the existing governance arrangements are fit-for-purpose.
 - b) Commissioning – how ECL can appropriately respond to the Council's commissioning requirements in adult social care.
 - c) Commercial – whether and how ECL should operate commercially inside and/or outside the Essex boundary.

5.9 The review work has concluded, and a draft report prepared.

Appendix 1

'For profit' organisations

Name	Type	Purpose /Explanation	Year of inception	Size	Date of published accounts	ECC Lead	Board Members (employees or members of ECC in bold type)
Essex Cares Ltd There are 4 subsidiaries: ECL Trading Ltd, Essex Community Support Ltd*, Essex Employment and Inclusion Ltd*, Essex Equipment Services Ltd* * Purely held for pension liability purposes	Local Authority Trading Company (ECC 100%)	To support the delivery of social care and associated products and services. Key aims include increasing skills (both life skills and employment skills), enabling more vulnerable adults to live independent of social care, limiting cost and driving growth in revenue by reducing the need for ongoing care.	2008	21/22 Turnover £53.7m Profit before tax £2.2m	Dated 18/1/23	Michael Neumann	Peter Fairley , Wendy Thomas, Joe Coogan, Michael McDonagh, Vineeta Manchanda, Bruce Moore, Steve Bennett, Cllr Ian Grundy
Essex Housing Development LLP	Limited liability partnership (ECC 99%, Seax Trading Limited 1%)	To help address housing need throughout the county by building high quality specialist, private and affordable homes. It supports the delivery of Everyone's Essex.	2020	21/22 Equity £228,978	Dated 20/12/22	Daniel Tooke	Cllr Ray Gooding, Stephanie Mitchener, Chris Martin, Gwyn Owen , Alan Lewin (Independent)
Medtech Accelerator Limited	Private limited Company (ECC 20%)	Set up to facilitate early-stage development of innovations in medical technology which address unmet clinical needs within the NHS. Investments so far have been concentrated in Cambridge.	2016	£500k investment.		Steph Mitchener	Dr Anne Blackood, Christine Golding , William Jones, Dr Louise Ann Jopling
Seax Trading Limited	Private limited Company (ECC 100%)	Enables ECC to trade services with the private sector for financial return.	2017	21/22 Turnover £127,673	Dated 20/12/22	Tina French	Tina French, Ian Fulton

Appendix 1 cont'd

'Not for profit' organisations

Name	Type	Purpose /Explanation	Year of inception	Size	Date of published accounts	ECC Lead	Board Members (employees or members of ECC in bold type)
Active Essex	Charitable Incorporated organisation (ECC has no ownership interest)	A county-wide initiative investing in provision of sports and physical activities for the residents of Essex with the overarching aim of improving long-term health and residents' quality of life across the county.	2016	21/22 Net receipts £224,477	Dated 20/12/22	Jason Fergus	<u>Trustees</u> Jennifer Tomblin, Cllr Ray Gooding , Robert Hayne, Robert McIntock, Jason Fergus , Katie Heron, Leigh Norris, Azeem Akhtar
Freeport East Limited	Company limited by guarantee	To facilitate skills, innovation, net zero, trade and investment and regeneration and levelling up within the Freeport Boundary through the development of plans aligning to partner strategies, project proposals and securing funding for such projects. The company acts as the delivery for some aspects of Freeport East	2022	N/A	N/A	Steve Evison	Christopher Bally, David Beavan, Stephen Beel, Emily Brightman, Clemence Cheng, Andrew Cook, Ian Davidson, Rachel Eburne, Andrew Lawrence, Mark Lemmon, Robert Singh, Richard Smith, Christopher Starkie, Cllr Lesley Wagland
South East Local Enterprise Partnership (SELEP) Limited	Company limited by guarantee (Dormant)	To support the Business-led board that works in partnership across the South-East to drive sustainable private-sector-led growth and job creation. Government set out the requirement for a company to be created in order to receive funding. ECC is the Accountable body for SELEP.	2020	N/A	Dated 21/10/22	Michael Neumann	Matthew Arnold, Cllr Christine Bayliss, Cllr Kevin Bentley , Cllr Graham Butland, Ana Christie, Simon Cook, Karen Cox, Cllr Tony Cox, Sarah Dance, Lauren Edwards, Carol Ford, Lara Fox, Elizabeth Gibney, Perry Glading, Cllr Keith Glazier, Roger Gough, Josephine James, Jeremy Kerswell, Vincent Lucas, Angela O'Donoghue, Graham Peters, David Rayner, David Sheppard, Penelope Shimmin, Clive Soper

Appendix 1 cont'd

'Not for profit' organisations

Name	Type	Purpose /Explanation	Year of inception	Size	Date of published accounts	ECC Lead	Board Members (employees or members of ECC in bold type)
Veolia Pitsea Marshes Maintenance Trust	Charitable Company limited by guarantee	Environmental body to distribute grant funding vial the landfill tax credit scheme to projects in the Basildon area which benefit the environment and local community.	2000	No budget requirements from ECC ECC is a trustee.	Dated 3/2/23	Jason Searles	ECC is a corporate trustee. Its authorised rep is Cllr Malcolm Buckley



Company Guidance

This Guidance provides information about companies and sets out the governance arrangements for their creation, [control](#) and monitoring.

Dated November 2017

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Guidance

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Appendix 1

1. Introduction
2. Companies
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1. Introduction

- 1.1 This Policy applies to all Essex County Council (ECC) companies.
- 1.2 A company is an "ECC Company" if ECC is (or will be): -
 - a. a member or shareholder of the company; and
 - b. in a position to appoint one or more directors.
- 1.3 The Leader of the Council is the Lead Member (Councillor) for all ECC companies.
- 1.4 All ECC Companies must have a Lead Officer. See paragraph 6 for further information.

Why ECC has companies

- 1.5 ECC is experiencing an increasing number of requests to be involved in companies, either as a shareholder or member, or appointing a director. This is partly because there is an increasing desire to trade on a commercial basis. Local authorities have always traded, but their powers have been restricted. The Local Government Act 2003 gives local authorities a broader power to trade in goods and services on a commercial basis. Unlike other trading powers, the use of the 2003 Act trading powers must be exercised through a company.
- 1.6 The continued financial pressures on local authorities has led to an increased need to find new ways to generate income. Local Authorities can trade through a company on whatever terms they like. They can trade outside their area and can trade with anyone who wishes to buy their goods and services. Accordingly the use of the trading power via a company allows for profit to be generated, which can be used as the local authority wishes – to protect services.

- 1.7 However, companies must comply with company law and ECC needs to ensure that companies are properly controlled so that we comply with the law and are not exposed to risk.
- 1.8 This guidance sets out ECC's requirements with respect to creation of new companies or investment in the equity of an existing company, and management of those companies to:
- ensure there is a clear business case for any proposed investment/acquisition proposal or continued participation in ECC companies and that they contribute to the achievement of the corporate objectives;
 - allow ECC to manage, within a well-defined framework, the performance of the companies it owns either solely or in conjunction with others;
 - minimise the risk of unlawful or unconstitutional decisions or actions;
 - enable ECC to obtain the financial information it needs to comply with ECC's own statutory financial reporting requirements in relation to entities it partly or wholly controls and to manage the Council's exposure to risk; and
 - improve transparency and record keeping in relation to ECC companies.

2. Creation of ECC Companies

- 2.1 The creation of an ECC Company is a significant step. No ECC Company may be created or dissolved without a formal Cabinet or Cabinet Member Decision.

Steps to consider before an ECC Company is created

- 2.2 Before a decision is taken to approve the creation of an ECC Company the proposal should be considered by the Shareholder Board.
- 2.3 A report to create an ECC Company must be in the usual format for a Cabinet Member Decision and set out:

Who is the Lead Officer for the proposed Company

- 2.4 Each ECC Company must have a Lead Officer. They will ensure compliance with this guidance and will ensure that ECC's relationship with the company is managed appropriately. Further details of the role of the Lead Officer are set out in section 5 of this guidance.

Who is proposed to be appointed by ECC as Director(s) of the Company

- 2.5 The proposed director must comply with the requirements in section 4 of the guidance.

Additional Information:

- 2.6 The report must provide the following information:
- a. the nature of ECC's proposed involvement in the Company and the (draft) Articles of Association;

- b. the relevance to the ECC's Organisation Strategy and other Policy;
- c. Implications and compliance with the Local Authorities (Companies) Order 1995;
- d. The estimated turnover of the company, the proposed business model, accounting and audit arrangements.
- e. Financial, resource and risk implications for ECC, including working capital requirements, any need for ECC to guarantee or underwrite the liabilities of the company in the event of 'going concern' considerations or insolvency and tax implications;
- e. Procurement and state aid implications for the Company's activities;
- f. human resource implications, including the response to consultation with staff / stakeholders if consultation has been carried out on the proposal.
- g. equality impact assessment;
- h. premises arrangements e.g. will there be a licence to use ECC premises;
- i. support arrangements;
- j. insurance arrangements;
- k. information and technology management implications and proposals;
- l. any arrangements for the use of ECC's name and brand;
- m. where ECC is a member/shareholder, how it is proposed that ECC will be represented at member meetings; and
- n. the Company's proposed business plan, or if no business plan is proposed, then why not.

3. The Shareholder Board

3.1 The Shareholder Board comprises of:

- The Lead Member;
- The Section 151 Officer (or their nominee); and
- The Monitoring Officer (or their nominee).

3.2 The Shareholder Board must consider any proposals to:

- a. Establish or dissolve an ECC Company,
- b. dispose of shares in an ECC company; or
- c. allow the company to issue new shares or allow anyone else to dispose of shares; or
- d. Change the company status from dormant to trading and vice versa.

3.3 The Shareholder Board will oversee ECC's relationship with ECC Companies, delivery of each ECC company's business plans, performance, financial issues, investments and governance arrangements.

4. ECC's Directors

4.1 Anyone appointed by ECC as a director to an ECC Company must:

- a. ensure that information required by ECC is provided;
- b. tell the Lead Officer if their connection with ECC will be coming to an end (eg if they cease to be an officer or a member as the case may be);
- c. answer questions about the activities of the Company put to them by ECC;

- d. ensure that arrangements are in place to comply with this guidance;
- e. undergo training, and receive briefings, as and when recommended by ECC Monitoring officer or s151 Officer; and
- f. consider internal and external audit reports relating to the company and seek to ensure that any recommendations will be implemented.

Appointment/Removal of Directors

- 4.2 Any decision taken by ECC (either under the Company's Articles or as shareholder) to appoint or remove a director of an ECC Company will be taken by the Lead Member by way of a CMA. The report must contain information regarding the proposed remuneration of the director and any benefits package to be received. Before the appointment of the director, careful consideration should be given to:
- a. the level of remuneration to be paid, and in the case of directors who are also councillors this must comply with the statutory restrictions (see below);
 - b. any potential conflicts of interest;
 - c. the skills and experience of candidates for appointment; and
 - d. the duration of the appointment.

Remuneration of ECC Company Directors

- 4.3 ECC Officers appointed as directors of ECC companies may not be paid any remuneration in addition to the salary they receive from ECC. They may not be paid by ECC or by the Company.
- 4.4 ECC's section 151 officer may approve exceptions to allow officers to be remunerated.
- 4.5 ECC Officers may be paid reasonable expenses incurred in the performance of their duties, and these will be payable by either the Company or by ECC. However any remuneration paid by the company must not exceed that which an ECC employee could claim from ECC under ECC's Travel and Subsistence Policy.
- 4.6 Where a Councillor is appointed as a director of a Regulated Company (see Appendix 1), it is essential that any remuneration paid complies with the provisions of the Local Government and Housing Act 1989 and article 6 of the Local Authorities (Companies) Order 1995 –i.e. it must not exceed what would be paid under the ECC Scheme of Member's Allowances. The Lead Officer must seek advice from the ECC Monitoring Officer if they believe that the company wishes to pay money to a regulated director.
- a. A regulated company shall not pay to a regulated director remuneration in excess of the maximum amount; or pay them an allowance, or reimburse expenses, in excess of the maximum amount.
 - b. The maximum amount is the greatest amount which would be payable by the relevant authority in respect of a comparable duty performed on behalf of that authority, less any amount paid by that authority in respect of the relevant duty to the regulated director in question;

- c. The maximum amount for travelling or subsistence allowance would be that which would be payable to that director by the local authority if the relevant duty were an approved duty.

Indemnities

- 4.7 Before appointing a director, the arrangements for indemnity cover should be confirmed with the company. Directors will be indemnified and covered by ECC insurance provisions if the work they are undertaking is part of ECC business and they are acting on behalf of ECC and in ECC's interest.
- 4.8 If the company is a not part of normal ECC business, separate indemnity cover will be required, and it would be expected that this would be provided via the Company. If there is any doubt, the director should seek advice from the Insurance Team.

Conflicts of Interest

- 4.9 Directors should ensure that they are aware of the potential for a conflict of interest between ECC and the ECC Company. Officers and Councillors cannot make decisions on behalf of ECC if there is a conflict of interest between their role within the company and the decision which to be taken. Councillors may need to declare a DPI (if remunerated or a Code Interest).
- 4.10 The Lead Officer must ensure that any significant conflicts of interest between an ECC Director's private interests and those of the Company are reported to:
 - * ECC's Monitoring Officer; and
 - * ECC's Finance Team.

5. Lead Officer

- 5.1 For each ECC Company, the Relevant Executive Director will nominate a Lead Officer who will ensure compliance with this Guidance and will ensure that ECC's relationship with the company is managed appropriately.
- 5.2 The Lead Officer must ensure that:-
 - a. the correct ECC governance procedures are followed;
 - b. the Company Change Forms are completed and submitted to the Director, Legal and Assurance in a timely fashion;
 - c. any failures by the company to comply with its legal and financial obligations are reported to the Shareholder Board and that action is taken to address any compliance issues;
 - d. Financial Services has the financial information and that they are given the information needed to make these determinations in good time;
 - e. Financial Services is advised of any equity owned in an ECC Company. For example, if there is a purchase or sale of shares, or ECC becomes a

member of a company limited by guarantee or a Limited Liability Partnership, then Financial Services should be informed;

- f. there are appropriate arrangements within their service for replacing company directors where necessary, for example if a company director leaves ECC, becomes incapacitated or changes work area;
- g. relevant information is passed to:-
 - i. Legal and Assurance
 - ii. Financial Services; and
 - iii. Traded Development Services.
- h. If there is no Company Secretary, the Lead Officer should ensure arrangements are made to comply with company law; and
- i. The ECC intranet pages are up to date.

5.3 A Lead Officer may be appointed as a director of the company but this is not essential.

6. The Role of Financial Services

6.1 ECC's Financial Services will maintain a central record of Company accounts and will ensure information is reflected in ECC's accounts as required.

6.2 Financial Services will: -

- a. offer advice on putting appropriate accounting arrangements in place;
- b. ensure that relevant accounting standards are complied with;
- c. ensure that external auditing is arranged, if necessary;
- d. complete the registration for VAT and Corporation Tax if necessary;
- e. prepare and submit returns to HMRC on time if necessary; and
- f. review ECC's involvement in ECC Companies on an annual basis to determine the information to be included in its own Statement of Accounts.

7. Monitoring of ECC Companies

7.1 It is important that ECC has sufficient insight into the activities of all ECC Companies and their performance, to ensure that any risks are being appropriately managed, and the company's objectives are being met.

Annual Report

7.2 In order to ensure that the Shareholder Board is informed annually of the ECC companies' performance, the Lead Officer for each Company shall by the end of December each year; submit a report to the Shareholder Board. The report will include information on the company's activity during the previous financial year including:

- a. changes to membership, directorships, company secretary or auditors;
- b. final audited accounts;

- c. statement of why the company is considered to be a going concern
- d. budgeted turnover for current year and, if available, future years;
- e. audit recommendations and actions being taken to address them;
- f. recommendations from internal or external inspectors;
- g. information about any dormant companies, including any intention to change their status; and
- h. The report will also set out the Lead Officer's risk assessment of the company, its trading and its impact on ECC. The risk profile will then enable the Shareholder Board to understand any potential implications and exposure to ECC.

*subject to the information provided under the points above, ECC may seek further details and submission to enable it to complete the ECC Statement of Accounts.

- 7.3 The Shareholder Board will consider as part of their review whether ECC should withdraw from a particular company and if so how that should be achieved (e.g. by sale or dissolution of the company). The default position will be that companies should only be retained if they provide a clear benefit to ECC.
- 7.4 The Shareholder Board will also decide whether there is a requirement for any ECC Company to provide updates more frequently or in greater detail or whether additional reporting channels to Councillors or senior management should be put in place, particularly where they are considered to be 'high risk'.

Dormant or non-trading companies

- 7.5 Even if the company is not trading, there are still legal compliance requirements to produce returns to Companies House, and the Lead Officer shall be responsible for ensuring continued compliance with those requirements and making an annual report to the Shareholder Board.

Financial Arrangements

- 7.6 ECC may be required to consolidate the accounts of ECC Companies and/or disclose details of its involvement in particular companies, within its statutory Annual Statement of Accounts. Accordingly Financial Services will require financial information about each ECC Company. The Lead Officer shall ensure that the relevant information, including copies of the company's accounts and other supporting information are provided to the Financial Services team in line with ECC's annual timetable for closure of its accounts.
- 7.7 The Lead Officer shall inform ECC's Section 151 Officer as soon as they become aware of any transaction of an ECC Company which is likely to affect ECC's financial position.

Audit

- 7.8 It is important that ECC companies have in place an appropriate governance framework and effective system of internal control, and will require proportionate arrangements to monitor on-going effectiveness and provide assurance to the Directors, Shareholders and ECC. The Lead Officer will be

expected to liaise with the ECC Chief Audit Executive to determine these arrangements.

- 7.9 ECC may be required to include information about governance of ECC companies within its Annual Governance Statement, and therefore each Lead Officer will be expected to ensure that it ECC Chief Audit Executive is provided with all relevant information.
- 7.10 There is an expectation that all ECC Companies which need to operate systems will use existing frameworks and systems, for example - IT systems and corporate financial systems. If there is a need to use alternative arrangements the Lead Officer is expected to work with the ECC Chief Audit Executive to ensure that internal control arrangements are robust and appropriate assurance mechanisms are in place.
- 7.11 ECC companies are normally required to appoint an external auditor in accordance with the companies act. The Lead Officer will be expected to liaise with S151 Officer to agree these arrangements.

ECC Intranet

- 7.12 Details of all ECC Companies shall be available on the intranet, and shall include:
- name of the Lead Officer;
 - details of the type of company
 - Company registration number
 - copies of the Articles and Memorandum of Association
 - copies of any Share certificates.
- 7.13 The Lead Officer is responsible for ensuring that the information contained on the Intranet pages is up to date.

8. Registration of Interests and Gifts and Hospitality

- 8.1 Officers and Councillors involved in ECC Companies must comply with ECC's Declaration of interest policy (officers) and Code of Conduct (Councillors) and ensure that where they have been appointed as a director of an ECC Company that this position is recorded within their register of interests, along with information about any fee or allowance from the company they receive in respect of their directorship. This may have to be disclosed in ECC's accounts.
- 8.2 In addition officers and Councillors must comply with ECC's Gifts and Hospitality Policy (officers) and Code of Conduct (Councillors) and ensure that they register any gifts or hospitality they receive. Members are not required to register gifts with a value of under £25.

Appendix 1

1. Introduction

- 1.1 This appendix sets out information about different types of companies and how they are regulated. It is not a substitute for legal advice.

2. Companies

Types of Companies

- 2.1 A company is a legal person which exists independently of its owners. It may enter into contracts, own property and trade in its own right. The owners of the company (usually referred to as 'members') appoint the directors and make certain other strategic decisions about the company. Almost all companies are limited companies. A company is a 'limited' company if the members' liability for the company's debts is limited in some way. A company may be
- Limited by guarantee* – the liability of its members is limited by its Articles to such amount as the members undertake to contribute to the assets of the company in the event of it being wound up (usually £1); or
 - Limited by shares* – the liability of its members is limited by its Articles to the amount unpaid, if any, on the shares held by them. This would be the extent of the shareholders' obligation to contribute to the company's assets.
- 2.2 There are also other delivery models available including:
- Partnerships;
 - Unincorporated Associations;
 - Limited Liability Partnerships (LLP);
 - Charitable Incorporated Organisation (CIO); and
 - Company Interest Company (CIC)

Each has its own specific obligations and duties, and associated risks and liabilities. Whilst they are not specifically addressed within this guidance the governance arrangements would apply. Advice should be sought from Essex Legal Services and Financial Services on the appropriate vehicle at an early stage [in accordance with ECC's Financial Regulations].

A Regulated Company

- 2.3 In addition to company law, the Local Government and Housing Act 1989 imposes some regulations on some companies in which local authorities have an interest. These companies are called 'regulated companies'. To be a Regulated Company, a company must fall into one of two categories, either the company is:
- a. Controlled by the local authority; or
 - b. Significantly influenced by the local authority.

Controlled companies

- 2.4 A company will be 'controlled' if one or more local authorities can (directly or indirectly) do any of the following;
- a. control the majority of votes at the general meeting (ie owns a majority of the shares);
 - b. have the power to appoint or remove the majority of the directors.
- 2.5 Where there are two or more local authorities who, acting together, can do any of these things, then the company is also considered to be controlled by a local authority.

Influenced companies

- 2.6 A company will be an 'influenced' company if the following two criteria are met:
- (a) there is a business relationship between the Company and the local authority under which any of the following apply: -
 - a. the local authority (or its companies) provide more than 50% of the company's turnover;
 - b. More than half of the company's turnover comes from exploiting the local authority's assets;
 - c. Capital grants from the local authority exceed one half of net assets of the company;
 - d. Nominal value of the local authority's shares exceeds half of net assets of the company;
 - e. The total of (c) and (d) above plus any loans from the local authority exceed half of fixed and current assets of the company;
 - f. Company occupies land obtained by the company from the local authority at below market value; and
 - g. The company intends that in the future any of (a) to (f) above apply.

AND

- (b) Either
 - a. 20% or more of voting rights in general meeting are held by the Local Authority officers/councillors (or someone who was a councillor within last 4 years);
 - b. 20% or more of directors are such persons; or
 - c. 20% of voting rights of directors are held by such persons.
- 2.7 Regulated Companies are subject to restrictions imposed by the Local Authorities (Companies) Order 1995, which require the company;
- a. To identify the local authority's participation in the company on the company's official business stationery;
 - b. To ensure that the levels of the remuneration of directors who are councillors does not exceed local authority levels for a comparable duty;
 - c. Not to permit disqualified councillors to act as directors;
 - d. Not to engage in a party political activity and/or publicity;

- e. To be accountable and provide information to the local authority's auditors;
- f. To provide information on request to councillors at meetings of the local authority;
- g. To provide financial information to the local authority;
- h. minutes of shareholder/member meetings must be open to public inspection.

How Companies Work

- 2.10 A company is a legal entity. It can enter into contracts and can sue and be sued in its own name. Members and Directors do not normally incur personal liability for any liability owed by the company.
- 2.11 A company is owned by its members, who are the shareholders of the company, or in the case of a company limited by guarantee, the people who have been admitted to membership of the company.
- 2.12 Companies are governed by a constitution which is called its Articles of Association. This sets out how the company will operate and who is allowed to make decisions within the company. There are Model Articles set by law. People setting up companies do not have to use the models but they are a useful starting point. ECC companies usually adopt their own bespoke articles.

Legal Duties on Companies

- 2.13 There are a range of legal duties which companies are required to meet, and it is therefore important to ensure that the directors and shareholders are fully informed of them.
- 2.14 There are some criminal offences where, if the company commits an offence then a director of the company can also be prosecuted if they have done something wrong or failed to do something they should have done.
- 2.14 Health and safety law imposes a statutory duty on employers. If a company is an employer then directors can have personal liability if these duties are breached. Directors have both collective and individual responsibility for health and safety, and therefore need to ensure that the company has appropriate procedures for auditing health and safety and ensuring that the Board receives reports on health and safety matters.
- 2.15 If an offence is committed under health and safety law 'with the consent or connivance' of any director, or is attributable to any neglect on the part of any director, then both the company and the director can be prosecuted under section 37 of the Health and Safety at Work etc. Act 1974. Managers have a similar liability.
- 2.16 Companies are required to send specific information to Companies House. They are required to tell Companies House about certain important decisions the company has taken (such as changes of name or of the company's constitution, about changes to the structure of the Board). Although directors do not usually send the information themselves, they do have responsibility for ensuring that the information is sent. Companies House can take action

against directors personally if information is not sent within the required timescales. Whilst companies are not required to have a company secretary, most companies do appoint someone into this role, who holds responsibility for ensuring that the reporting requirements to Companies house are met.

3. Directors

3.1 Directors do not own the company, but are accountable to the shareholders/members for the activities carried out by the company and they make the day to day decisions affecting the company. If a director is employed within the company they are known as an Executive Director. Those directors not employed within the company are known as non-executive directors.

3.2 For local authority companies, a regulated director is someone who is both:

- a. a director of a regulated company and
- b. a councillor of the local authority that controls or influences the company.

Legal Duties

3.3 The general legal duties of a company director are: -

- a. to act in accordance with the company's Memorandum of Association and Articles of Association and only exercise powers for the purposes for which they are conferred;
- b. to act in good faith, in a way most likely to promote the success of the company for the benefit of its members and shareholders as a whole and in so doing to have regard to various specified matters;
- c. to exercise independent judgment;
- d. to exercise reasonable care, skill and diligence;
- e. to avoid a situation in which the director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company;
- f. to not accept a benefit from a third party conferred by reason of the director being a director, or their doing (or not doing) anything as a director;
- g. to declare if they are in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, and the nature and extent of that interest, to the directors; and
- h. to appoint a company secretary (if one is required by the Companies Act 2006).

3.4 Directors may be personally liable if they trade when they know or ought to know that a company is insolvent. Furthermore, if rules and requirements are not followed, directors can be fined, prosecuted or disqualified from being a company director.

- 3.5 A company's Board of Directors usually hold meetings. The Board is expected to provide strategic management and have oversight of the company. Formal decisions of the Board are made through passing Board Resolutions. The Board can delegate decisions to individual Directors or to other people (eg employees or others).

4. Other Key Personnel

Company Secretary

- 4.1 The role of the company secretary is to:-
- a. Maintain the company's records and registers (statutory and non-statutory);
 - b. Run the agenda for and to take minutes of, board meetings and members' meetings; and
 - c. Filing documents at Companies House, as required by statute.
- 4.2 Where there is an obligation to file documentation at Companies House, it is important to note that there are often strict time limits from the date at which the relevant decision was made (i.e. the date of a Board Resolution or Written Resolution or the date on which a CMA is passed). Fines will be levied by Companies House for any late filings. The Board must, therefore, ensure that the Company Secretary is furnished with all Board Resolutions or Written Resolutions immediately after they are made.
- 4.3 Private Limited Companies are not required by law to appoint a Company Secretary, however, most companies choose to do so. Whenever possible, an officer in Essex Legal Services will usually be the Company Secretary for Regulated Companies.