

# **Title of report: Guidance on Performance & Decision Making for Cyber Quarter Ltd and Hoople Ltd**

**Meeting: Shareholder Committee**

**Meeting date: 17 June 2024**

**Report by: Leader of the Council (Section 9E);**

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

(All Wards);

## **Purpose**

To adopt the guidance document as being the detailed framework that business planning and financial and performance information is reported by the companies to the Shareholder Committee.

## **Recommendation(s)**

**That:**

- a) The Council's requirements for annual business planning for the companies shall follow the detailed Guidance;**
- b) Financial and performance information shall be reported to this Committee as set out in the guidance document; and**
- c) Notes the guidance in respect to decision making for and within the companies.**

## Alternative options

1. None – Cabinet has specified in its [Terms of Reference](#) for the Shareholder Committee that there should be oversight by its committee to monitor financial and other information including risks.

## Key considerations

2. Corporate governance in respect to the local authority's companies is multifaceted, involving a range of governance processes, techniques and documentation to ensure that the Council is satisfied that it has a good level of control, understanding and delivery from its companies.
3. In addition, the Council has awarded contracts to its owned companies (whether wholly or jointly owned) without a full tender but relying on the Regulation 12 exemption in the Public Contract Regulations 2015. This exemption requires that the Council must during the term of any contract, demonstrate that it continues to exercise decisive influence over the strategic objectives and significant decisions of the company. The Shareholder Committee plays an important part in this influence.
4. The Council exercises control and influence over its trading companies in a number of ways:
  - a. It appoints directors to the Board who (subject to their own duties to the company) can ensure that matters of relevance to the Council are achieved;
  - b. The Council is a shareholder in the companies and has powers and rights under Companies Act 2006 similar to any shareholder. Where the company is jointly owned, an agreement has been entered into with the other shareholders on matters such as sharing of information, strategic direction, business planning and reporting; and
  - c. The Council purchases services as a customer from the Company under contract and the terms of the contract set out precisely what and how services are delivered to the Council.

It is through the combination of these governance functions that the necessary influence is maintained and that the Council can satisfy itself that governance is sufficiently rigorous. The Guidance recommends processes to adopt in respect to activities considered to strengthen governance.

5. The Committee will receive reports at the next Shareholder Committee meeting from the Council's appointed company Directors and Council's Senior Responsible Officer in relation to matters such as company performance, budgets and delivery to the business plan.
6. Although the Shareholder Agreements provide a generalised framework for reporting, it is non-specific on exactly what is reported, to whom and when. Further, it has no reference to or linking with internal bodies or decisions making within the Council. The intention for the Guidance document is to fill this gap in relation to business planning, reporting and decision making.
7. The main elements within the Guidance are:

### Business Plan

- a. This is the process and decision making required in relation to the formulation and approval of the annual Business Plan and the associated budget. This involves the Council (via the Shareholder Committee) issuing a remit to the company of what is

expected from it in advance of the next year. The company then prepares a plan that will deliver to that remit and specify the budget required.

#### Financial & Performance Reporting by Directors

- b. The Shareholder Agreement requires the Company to report relevant financial and performance information to the Council (in addition to reporting requirements in a contract for services). The Guidance requires this information to be reported to the Shareholder Committee. Part of the reporting will be provided by the Directors and the Council's Senior Responsible Officer will provide commentary from the relevant council officers. This information will inform whether the Company is meeting the business plan.

#### Decision Making

- c. The second part of the Guidance document provides instruction on which body or individual in the Council or company has the authority to make a particular decision. The document is designed so there is a single point of information to the Shareholder Committee of whom makes a specific decision.

### **Community impact**

9. There is no direct community impact by the adoption of the Guidance document.

### **Environmental Impact**

10. There is no direct environmental impact.

### **Equality duty**

11. The public sector equality duty requires the Council to consider how it can positively contribute to the advancement of equality and good relations, and demonstrate that it is paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on the internal decision making within the Council, we do not believe that it will have an impact on the Council's equality duty.

### **Resource implications**

8. The adoption of the Guidance will be performed as part of the existing obligations between the Council and the companies and there will not be any additional resource costs.

### **Legal implications**

9. The Shareholder Committee forms part of the overall governance arrangements for the Council in relation to companies and other legal entities which are wholly or partly owned or controlled by the Council.
10. The Council must demonstrate influence over the companies for the Council to rely on the exemption in Regulation 12 of the Public Contracts Regulations 2015. The activities of monitoring the financial and performance information and determining the strategy of the Company is intrinsic to demonstrate the application of this influence.

11. If the necessary influence cannot be demonstrated, then any contract award to a local authority owned company (or the continuation of an existing contract) would need to follow a fully compliant tender process under the Regulations

## Risk management

12. The risks have been identified as follows:

<u>Risk / opportunity</u>	<u>Mitigation</u>
The Council does not demonstrate the necessary influence	Legal advice is that adoption of the guidance means that the Council is operating within a governance framework that is recognised as being as thorough as possible within the local authority context.
Cabinet does not monitor performance	The necessary influence is weakened but some control is maintained through Directors appointments to the Board and the contract. If active monitoring is not done then there could be a risk of uncontrolled overspend or missing performance target
Cabinet does not set a business plan	If the Council does not actively manage the business plan for the companies then there is a risk that the company does not deliver to the Council's strategic priorities or is in direct conflict with them.

## Consultees

None

## Appendices

None

## Background papers

None

## Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	John Coleman	Date 20/05/2024
Finance	Click or tap here to enter text.	Date Click or tap to enter a date.
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Approved by Andrew Lovegrove Date 06/06/2024