

7 March 2019

<b>Report of</b>	<b>Assistant Director Policy &amp; Corporate</b>	<b>Author</b>	<b>Andrew Tyrrell</b>
<b>Title</b>	<b>Review of the Draft Refreshed Business Plans, Governance and Performance of the Council's Wholly-Owned Companies.</b>		
<b>Wards affected</b>	All Wards		

## 1. Executive Summary

- 1.1 In April 2018 the Council set up a wholly owned company, Colchester Commercial Holdings Ltd (CCHL) and three subsidiary trading companies; Colchester Amphora Energy Ltd (CAEL), Colchester Amphora Homes Ltd (CAHL) and Colchester Amphora Trading Ltd (CATL). This Report sets out the governance arrangements that the Council has in place in order to monitor and review the activities of the companies up to the end of Jan 2019.
- 1.2 The Governance & Audit Committee are asked, in their role as the shareholder committee, to review the performance of Colchester Commercial (Holdings) Limited and its subsidiary companies to date.
- 1.3 The companies' Business Plans have also been revised to reflect current trading activity and the committee are asked to review these latest draft versions of the Business Plans and make comments and recommendations to Cabinet.

## 2. Recommended Decision

- 2.1 To note the governance arrangements that are in place between the Council and Colchester. Commercial (Holdings) Limited and its subsidiary companies.
- 2.2 To consider and review the activities and financial performance of Colchester Commercial (Holdings) Limited and its subsidiary companies.
- 2.3 To review, and make recommendations to Cabinet on, the refreshed draft Colchester Commercial (Holdings) Limited Business Plans, including for its subsidiary companies.

## 3. Reason for Recommended Decision

- 3.1 At the Annual Meeting on 23 May 2018, the Governance & Audit Committee's terms of reference were amended to include the responsibility to act as the shareholder committee for Colchester Commercial (Holdings) Limited. As part of this role the Committee is required:
  - To consider and review the activities and financial performance of Colchester Commercial (Holdings) Limited and its subsidiary companies.
  - To receive, review and recommend Colchester Commercial (Holdings) Limited's business plans (including its subsidiary companies) annually.

- To monitor, challenge and make recommendations to Cabinet regarding Colchester Commercial (Holdings) Limited and its subsidiary companies.
- To make recommendations to Cabinet on how it should exercise the functions flowing from its ownership of shares in Colchester Commercial (Holdings) Limited and its subsidiary companies.
- To recommend the constitution and appointment of the Board of Directors, including to recommend to Cabinet the appointment of nominee directors to the board of Colchester Commercial (Holdings) Limited.

#### **4. Alternative Options**

4.1 No alternative options are provided.

## **5. Background Information**

- 5.1 The Localism Act 2011 enabled local authorities to undertake activities designed to make a profit, but only if delivered within a company. The Council established wholly owned companies using these powers. The companies were incorporated under the Companies Act 2006 on 1 June 2017, and began operating from 1 April 2018. The aim was to enable the Council to operate its direct trading services and development functions within a more commercial culture, to address the challenges of ongoing budget pressures. A further 3 subsidiary companies, each with distinct areas of trading, were also formed:
- Colchester Amphora Energy Ltd (CAEL)
  - Colchester Amphora Homes Ltd (CAHL)
  - Colchester Amphora Trading Ltd (CATL)
- 5.2 CCHL is a private company limited by shares, with the Council being the sole shareholder. The Council consequently retains full control over the direction of the companies, manages the risks and receives the resulting financial benefits.
- 5.3 Good governance, accountability and transparency are essential to councils and a cornerstone to improving public services. In discharging this accountability, the Council is required to make proper arrangements for the governance of its companies. It was imperative that an appropriate governance structure was put in place to ensure the sound and robust management of the companies, alongside protection of the Council's financial and reputational investment in them.
- 5.4 The Board of CCHL is made up of four Councillors (Cllrs Barlow, Flores, Goss, and J. Young) and the Managing Director. The Managing Director of CCHL is the Chief Executive of the Council. This role has overall responsibility for ensuring compliance with the Shareholder Agreement. The representation on the Board allows the Council to offer direction to the holding company and its subsidiaries, whilst providing it with the freedom to operate in a fully commercial marketplace driving forward delivery as outlined in the agreed Business Plans.
- 5.5 The CAEL Board consists of 3 Directors:
- Ian Vipond, (Chair)
  - Adrian Pritchard
  - Fiona Duhamel
- 5.6 The CAHL Board of Directors comprises 3 Directors:
- Adrian Pritchard (Chair)
  - Ian Vipond
  - Gareth Mitchell
- 5.7 The CATL Board is also made up of 3 Directors:
- Fiona Duhamel (Chair)
  - Adrian Pritchard
  - Ian Vipond
- 5.8 Directors have legal duties through the common law directors' duties and the statement of general directors' duties that are set out in the Companies Act 2006, but these are not exhaustive in terms of the duties that are owed by a director to an organisation. Board members are also subject to other legal duties, including a large number of very important legal obligations around making investments, disposing of land, health and safety requirements, and employment laws.

## 5.9 Management Agreement

- 5.9.1 The Management Agreement between the Council and CCHL sets out how the company will provide a range of services to the Council. The Company and its subsidiaries are also managed and monitored in accordance with the target budgets and other KPI's agreed with the Council under its Management Agreement. The Agreement complies with TECKAL regulations and it is expected that the companies will also, over time, develop and offer a range of services and activities to new markets, which may include other public sector bodies.
- 5.9.2 Within the Management Agreement it is set out that the Company representatives and Council representatives will meet in regular liaison meetings, where the Council, as (and through its) Client, monitors the manner and provision of the services set out in the management agreement, financial and budgetary performance, non-financial performance and other matters related to the relevant issues that may arise from time to time. As an appendix to the Management Agreement there is a Liaison Protocol, which sets out the frequency and type of meetings to be held between the Council and the Companies.
- 5.9.3 The Management Agreement also sets out Audit requirements. All of the companies are subject to any audit and inspection requirements of the Council. External audit remains an essential element in accounting for public money and makes an important contribution to the stewardship of the Councils public resources. It also supports local democracy by helping to ensure that members and officers are accountable to the communities they serve and by providing assurance that the public money they manage has been properly spent.
- 5.9.4 Copies of audited accounts must be provided to the Council as soon as reasonably practicable after external audits. The Company also undertakes all internal and external audit to comply with the law. Similar requirements also exist in regard to complaints, enquiries and legal proceedings related to any services provided by the companies.
- 5.9.5 The Company manages, on behalf of the Council, the following budgets:
- Sports and Leisure Services
  - Corporate asset management
  - Commercial and investment properties
  - Helpline
  - CCTV
  - Capital budgets related to project in the Revolving Investment Fund (RIF).
- 5.9.6 Budgets are set in accordance with the Council budget setting process, framework and timeframe. Submissions are made in November, and considered as part of the overall Council budget. The Council budget is agreed as part of the annual budgeting process and the Company are notified of the budget no later than the 1<sup>st</sup> of March.
- 5.9.7 Monthly reporting between the Company and the Council takes place throughout the year, as part of the liaison protocol. This monitors the budget in terms of predicted overspends or underspends, and explores issues that may arise in the course of the year. In the first instance, any remedial actions that may be required are planned and managed by the Company. In the event that this cannot be managed within the Company controls, they would submit a case to the Council to consider and agree what action should be taken. Where there are any underspends on budgets this is retained by the Council at year end.

5.9.8 The Management Fee that the Council pays to the Company to manage the services set out in the Management Agreement is also included within this document. The fee for this year between the Council and CCHL was set at £1,918,000. This fee is also agreed annually, as part of the Council budget process.

#### 5.10 Service Level Agreement (SLA)

5.10.1 It was agreed that CCHL and its subsidiaries will “buy” services from the Council and these services are outlined in a Service Level Agreement (SLA). The Companies pay CBC a fee for the provision of these services. The current SLA runs from 1 April 2018 to 31 March 2021.

5.10.2 This agreement forms the basis of the partnership between the Councils companies and the services provided by the Council. The agreement lays out the respective roles and responsibilities of each party in the provision of the services as outlined below. The service specification and standards for each of the following services are contained as appendices to this agreement;

- ICT and telephony
- Communications, marketing and PR
- Human Resources
- Finance
- Legal, audit, insurance, health and safety, procurement, security and post
- Room and Hallkeepers services (Governance)
- Accommodation
- Fleet
- Customer Services.

5.10.3 Performance of each service, delivery standards and any quality assurance matters were scheduled to be monitored at quarterly review meetings between named individuals within each Council service area and CCHL. Different services have since established different arrangements and practices with the Company that suit their needs as to who attends these meetings and when they are required. There remains agreed routes for escalation if the need arises, as set out within the SLA.

5.10.4 The annual fees for the services provided by the Council are also detailed. The table below summarises the total figures for the first year (2018/19):

<b>Services</b>	<b>Cost</b>
ICT and Telephony	£152,000
Communications, Marketing and PR	£77,700
Human Resources	£28,000
Finance	£82,100
Governance	£90,700
Accommodation and associated facilities	£87,200
Fleet Services	£21,600
Customer	£121,300
<b>Total</b>	<b>£660,600</b>

#### 5.11 Business Plans

5.11.1 CCHL ensures that the three subsidiary companies deliver against their individual Business Plan targets. The overarching Business Plan for CCHL sets out that the holding

company provides the strategic direction, financial performance monitoring and senior management capacity for the subsidiary companies.

5.11.2 In addition, although CCHL is a holding company, it does undertake some trading activities. For example, it provides the senior management service and strategic direction to the Council's Sport and Leisure function. Each of the subsidiaries has its own Business Plan as detailed below.

5.11.3 The draft version of the "refreshed" and updated CCHL Business Plan remains broadly similar to the 2018 version. Except that it starts to identify some growth objectives which, together with its subsidiaries, will be a focus for the remainder of the plan period (alongside delivery of the management agreement services for the Council). The Plan sets out aims to:

- Continue to deliver against set targets
- Develop second programme of sites for CAHL
- Develop phase 3 garage sites for the Council
- Continue to develop a pipeline of development projects for the Council
- Invest in Digital Technology in both Helpline and CCTV Service
- Explore new opportunities to develop low carbon projects in Colchester
- Continue to explore market for CCHL products and services

5.11.4 The CAEL Business Plan sets out the rationale for setting up the company, which was initially to focus on the Northern Gateway Heat Network. To be able to trade and supply heat the Council needed to set up a new company and it did so to demonstrate its commitment to the low carbon agenda and to provide leadership in the development of "infrastructure-first" energy provision. The resulting Northern Gateway Heat Network (NGHN) will provide an innovative ultralow-carbon heat solution to residents, businesses and other commercial users as part of the proposed growth planned in this part of the borough. The project will be the first of this scale in the UK, and was 1 of only 9 pilot projects that gained grant funding nationally.

5.11.5 In its draft version of the refreshed Business Plan, CAEL now outlines the changes that have occurred in its first year of trading. The Northern Gateway Heat Project remains the main company focus, but the delivery mechanism for the project has changed with the Council taking on a lead role in the infrastructure of the scheme (as agreed at Cabinet in January). CAEL remain responsible for the heat plant and for supplying services to customers. The structure has been amended to reflect the CAEL ability to secure Renewable Heat incentive (RHI), which adds more financial sustainability into the project and grows the rate of return to the Council as shareholder. The Plan continues to highlight other emerging projects which will be developed in the next year of trading.

5.11.6 The Business Plan for CAHL reflects how the company was established to respond to the need for more high quality homes in the borough that are affordable for local people by creating a cross subsidy mechanism with sale of the private homes creating a surplus to invest in affordable homes. Development of new homes for private sale also provides income opportunities for the Council (by optimising existing assets in its ownership and recycling any profits from development for the Council to reinvest into core services).

5.11.7 The Business Plan for 2018 to 2021 set out that the company will develop 4 sites, which were agreed by Cabinet in October 2018. The sites will deliver over 300 new homes and 30% of the new homes built will be affordable homes. The Business Plan also sets out that the company will be seeking to develop and secure terms for a second programme of sites for the Council.

5.11.8 The refreshed draft version of the CAHL Business Plan 2019 highlights the same core objectives of the company (building quality affordable homes for local people, creating a commercial income stream for the Council, and building sustainable homes). However, a number of changes have occurred since the company was established in 2018 and these are highlighted in the refreshed plan; these include:

- Changes to the CBC HRA borrowing headroom thus enabling the completed affordable assets in CAHL to be purchased back by the Council rather than being retained and rented out by CAHL
- Agreements to the site value and site purchase contracts exchanging for the land CAHL is buying from CBC
- CBC putting equity into CAHL
- New work taken on by the company to provide housing development management services to CBC for its own garage site new homes programme

5.11.9 The Business Plan for CATL sets out that the company offers a range of commercial trading businesses and services to customers which will generate new levels of income for the Council. CATL's offering has 2 main functions;

- Direct commercial trading services, including Helpline, Monitoring and CCTV and Events.
- Professional property and business services, offered initially to the Council and then to external clients as the company grows. These services include estates management of the Council's assets, economic development and business support services and commercial development and regeneration project management.

5.11.10 The refreshed CATL Business Plan highlights the direction of travel for the new company as it approaches the end of its first year of trading. The Plan outlines new business opportunities as the Company becomes more established; for Events this focuses on growing the venues and introducing new markets, such as corporate functions. For Helpline, there are also new markets to be explored now that the business is trading effectively. For Development services more work is being picked up for other Council departments, such as Communities, although the Company plans to seek other public sector clients in 2019.

5.11.11 All of the Business Plans must be delivered in full compliance with the governance requirements set out by the Council. The Business Plans require the agreement of the Cabinet, but the latest proposals for revised draft Business Plans are attached as Appendix 1 (CCHL), 2 (CAEL), 3 (CAHL) and 4 (CATL) for review and recommendations to be made (to Cabinet) by this Committee.

## 5.12 Key Achievements

5.12.1 The key trading achievements of the Company to date are outlined below with a comparison on the previous year to show progress made. For Helpline and CCTV:

<b>Helpline</b>	<b>2017/18</b>	<b>2018/19</b>	<b>Increase/Decrease</b>	<b>%</b>
Answered Calls	55,340	56,000	660	1%
Customers	3,125	3,500	375	12%
Fallers	2,820	3,000	180	6%
<b>CCTV</b>				
Assisted Arrests	241	150	-91	-38%

5.12.2 In events, there has been growth of the activities and resultant visitors:

Events	2017/18	2018/19	Increase/Decrease	%
<b>Number of Visitors by venue:</b>				
Charter Hall	26,000	31,000	5,000	
Open Air/Park	130,000	180,000	50,000	
	<b>156,000</b>	<b>211,000</b>	<b>55,000</b>	<b>35%</b>
<b>Number of Events by venue:</b>				
Charter Hall	48	55	7	
Town Hall	341	359	18	
Castle	59	57	-2	
Open Air/Park	42	46	4	
	<b>490</b>	<b>517</b>	<b>27</b>	<b>6%</b>

5.12.3 In addition, the Commercial Development and Estates team have continued to perform well, particularly towards the latter part of the year (as the national economic position became less positive).

<b>Commercial Development and Estates</b>	
Estates	Assets managed proactively with £3.2m rent roll maintained and grown through RIF income projects
Commercial Development	Managed £35m capital programme with circa £32m value of projects already under construction
Economic Development	£18m external funding secured for CBC in 2018/19
Digital Strategy	First major development in the Digital strategy secured through £3.3m government funding to expand ultrafast connectivity to north and east Colchester

5.12.4 CAEL and CAHL company progress updates currently relate to the projects being delivered below (and in Appendix 5):

### Colchester Amphora Energy Limited Delivery Plan

#### January 2019

Scheme	Initial Technical & Legal Due Diligence	Soft Market Testing of Installation Contract	Grant & RHI legal advice	Borehole no. 1 test	Long term technical advisor appointment	Scheme Design to RIBA 3 by technical advisor	Boreholes no. 2, 3, 4, 5	D&B Procurement Start process	D&B Contractor Appointment	Planning Consent	Start on Site Energy Centre	First heat delivery	Practical Completion
NG Heat Network	Complete	Complete July 2018	Complete Aug 18	Complete Aug 18	Nov 18	Jan 19	Jun 19	Feb 2019	Sept 19	Mar 19	Sept 19	May 20	Dec 23

#### January 2019

### Colchester Amphora Homes Limited

CAHL PHASE 1 Programme									
Project	Technical and Legal Due Diligence	Architect Procurement	Planning Submission	Soft Market Testing -Build Contract	Contractor Appointment	Planning Consent	Land Acquisition (exchange)	Start on Site	Practical Completion
Creefield Road	Jul-18	Jun-18	Feb-19	May 19	Jul-19	April 19	March 19	Sep 19	Sep 20
Military Road	Jul-18	Jun-18	Pre-App Submitted Feb 19 (Full App March/April 19)	May 19	Jul-19	May 19	March 19	Sep 19	March 21
St Runwald Street	Jul-18	Jun-18	Pre-App April 19 (Full App June 19)	July 19	October 19	August 19	March 19	Aug 19	Apr 21
Mill Road	Sep-18	Aug-18	Pre-App Feb19 (Full App May 19)	Sep-19	Dec-19	Aug 19	March 19	Dec-19	Dec 23 (Final phase)



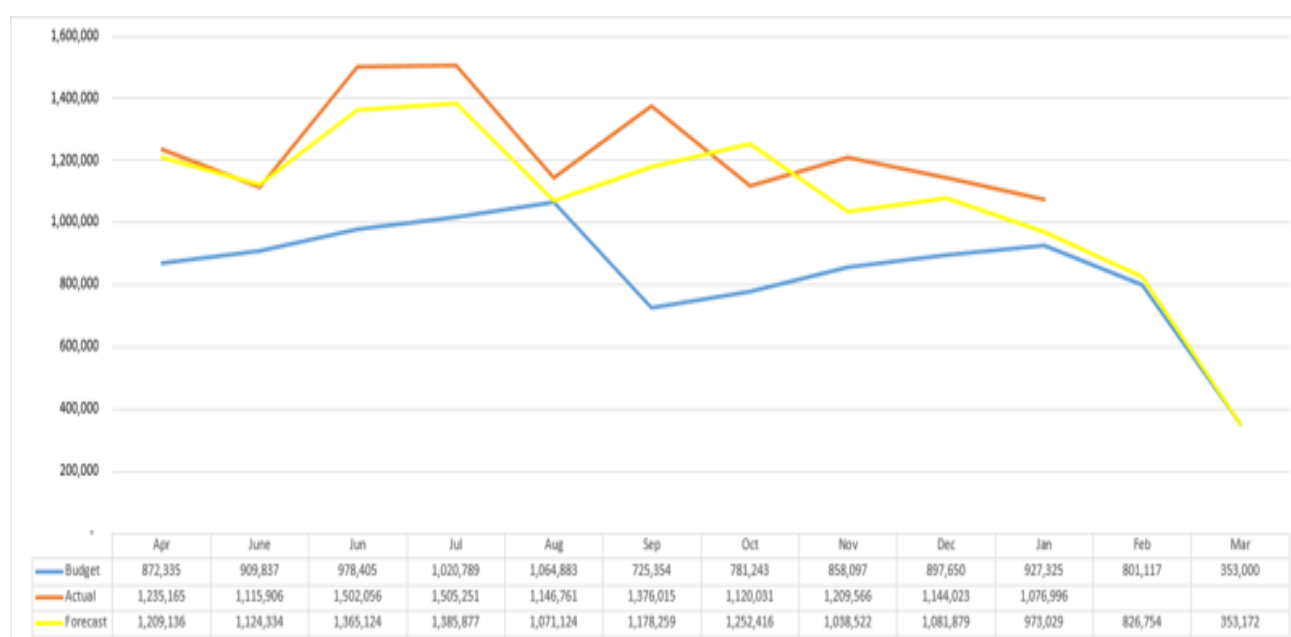
5.12.5 Notably, the Northern Gateway Heat Network being delivered for the Council by CAEL is a flagship project for low carbon heat generation. It has the support of the Department of Business, Industry and Industrial Strategy (BEIS) Heat Network Project (HNIP), being one of only 9 pilot schemes funded by their grant funding across the country. The project has national significance, due to the innovative use of ground water to generate heat at this scale. The table above shows that work continues, and it is expected that RIBA stage 3 design work will be undertaken shortly.

5.12.6 In terms of housing, CAHL are continuing to progress phase 1 of their agreed development sites and will be delivering over 300 new homes in Colchester over the next few years. This will include the provision of over 100 new affordable homes, which are much needed by the borough's residents. The affordable homes will be owned by the Council. Planning applications are now expected to be submitted for the first sites whilst a number of legal agreements (including the loan and the sales) are also being finalised.

### 5.13 Financial Performance

5.13.1 The Company manages its budget within the overall management fee and through income that the companies generate from their activities. This is then monitored in bi-monthly liaison meetings with the Council, which include officers from the client and finance teams.

5.13.2 A copy of the financial performance summary for CCHL is provided below. Further detail on specific company financial performance sits within the confidential Appendix 5 of this report.



5.13.3 Taking figures from the end of January, it is anticipated that the £282k dividend for the Council will be achieved for financial year 2018/19. This figure is net of all year-end costs and tax.

### 5.14 Non-financial Performance

5.14.1 The non-financial performance of the companies is also monitored in the bi-monthly liaison meetings with the Councils client team. A copy of the non-financial performance summary for CCHL and its subsidiaries is provided within Appendix 5 of this report. This

is taken from the performance dashboard that was provided for the February meeting between the Councils client and finance teams, and the companies.

## **6. Equality, Diversity and Human Rights implications**

- 6.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.2 The recommendations will have no disproportionate impact on any protected group. Further Equality Impact Assessment information can be found [here](#).

## **7. Strategic Plan References**

- 7.1 Governance is integral to the delivery of the Strategic Plan's priorities and direction for the Borough as set out under the four themes of growth, responsibility, opportunity and wellbeing. The Council recognises that effective local government relies on establishing and maintaining the public's confidence, and that setting high standards of self-governance provides a clear and demonstrable lead. Effective governance underpins the implementation and application of all aspects of the Council's work. The activities of the Council's companies contribute to the following Strategic plan References:
- 7.2 GROWTH... Ensuring all residents benefit from the growth of the borough
- Help make sure Colchester is a welcoming place for all residents and visitors
  - Ensure residents benefit from Colchester's economic growth with skills, jobs and improving infrastructure
  - Promote inward investment to the borough
  - Work with partners to create a shared vision for a vibrant town centre.
- 7.3 RESPONSIBILITY... Encouraging everyone to do their bit to making our borough even better
- Increase the supply of good quality homes by using legal powers to reduce the number of empty homes and improve standards in the private rented sector
- 7.4 OPPORTUNITY... Promoting and improving Colchester and its environment
- Promote and enhance Colchester borough's heritage and visitor attractions to increase visitor numbers and to support job creation
  - Promote green technologies through initiatives such as SMART Cities
  - Help business to flourish by supporting infrastructure for start-up businesses and facilitating a Business Improvement District
  - Promote initiatives to help residents live healthier lives.

- 7.5 WELLBEING... Making Colchester an even better place to live and supporting those who need most help
- Encourage belonging, involvement and responsibility in all the borough's communities
  - Work with Essex Police and partners in the Safer Colchester Partnership to make Colchester an even safer place
  - Create new social housing by building Council homes and supporting Registered Providers
  - Target support to the most disadvantaged residents and communities
  - Help residents adopt healthier lifestyles by enabling the provision of excellent leisure facilities and beautiful green spaces, countryside and beaches.

## **8. Consultation**

- 8.1 There is no specific consultation requirement generated in relation to this Report.

## **9. Publicity Considerations**

- 9.1 There is no specific publicity consideration in relation to this Report.

## **10. Financial implications**

- 10.1 In terms of overall governance, the companies operate as separate organisations with financial regulations agreed by relevant company boards. Where the companies are spending money on behalf of the Council, such as sport and leisure, capital budgets within the RIF, etc, then all approvals are required to be in line with normal Council procedures.
- 10.2 In terms of the financial assumptions and dividend targets, when the companies were set up the financial targets and estimated dividend for 2018/19 was broadly based on existing budget assumptions when services were operating within the Council.
- 10.3 The performance in the current year shows that CCHL will deliver against its target dividend for 2018/19. Further details can be found in the confidential dashboard attached at Confidential Appendix 5.
- 10.4 Looking ahead to 2019/20, the target dividend set out in the CCHL business plan and council budgets assumes an increase in income for the Council of £107k. The Business Plan for CCHL sets out how it is expecting to deliver this increased dividend for the Council, so that the Council can benefit from this in providing our services to the public.
- 10.5 Turning to funding for CCHL, funding for the company (and certain CATL services) is via a management fee paid by the Council and through income that the companies generate. In addition, separate agreements are being finalised to provide loan finance to the housing and energy subsidiaries. These have been subject to separate reports agreed by Cabinet and as such are not set out in detail within this report.

## **11. Health, Wellbeing and Community Safety Implications**

- 11.1 Health and wellbeing is influenced by a number of factors, many of which fall under the responsibility of the Council. The Company activities span various aspects and assist the

Council to do all it reasonably can to promote positive health benefits to our residents; whilst reducing, removing or minimising any unintended consequences to health that may arise from services or decisions.

## **12. Health and Safety Implications**

12.1 The matters herein do not result in harm to the health and safety of the general public.

## **13. Risk Management Implications**

13.1 CCHL has a risk register that is actively managed. Each of the subsidiary companies also have their own risk register. All of the companies have a Business Continuity Plan.

13.2 The key risks associated with the companies concern the financial risk attached to the delivery of income targets (capital and revenue) and management of costs. This is actively managed through regular monitoring and reporting on the financial position and the governance arrangements detailed within the report.

## **Appendices**

1: CCHL Business Plan

### Confidential

2: Confidential CAEL Business Plan

3: Confidential CAHL Business Plan

4: Confidential CATL Business Plan

5: Confidential Client Liaison Strategic Report