# Establishing a Council-Owned Corporation.

**Introduction**

Welcome to the third of our articles on council-owned corporations.

A well-structured council-owned corporation can provide councils with commercial flexibility and the ability to operate effectively in competitive environments, while maintaining clear public accountability.

Success depends on getting the structure, governance and compliance settings right from the start. In this article, we outline key steps to getting a council-owned corporation right from the start, from defining its purpose to ensuring compliance and good governance.

**1. Getting the Structure Right**

Most council-owned corporations are established as companies limited by shares (Pty Ltd) registered with the Australian Securities and Investments Commission (ASIC). Before incorporation, councils should determine the ownership and governance model that will best support their objectives.

Under the Corporations Act 2001 (Cth) (Corporations Act), a proprietary company must have at least one director, who must ordinarily reside in Australia. While that satisfies the legal minimum, three to five directors are generally considered good governance practice. This allows for diversity of skills, continuity and balanced decision-making.

As explored in our earlier article on Director Duties and Conflicts of Interest, it is good practice to have independent directors who bring commercial or technical expertise and provide objective oversight.

The shareholder is usually the council itself holding 100% of shareholdings in the company, though some councils collaborate through regional or joint-venture ownership models. Whatever the structure, the company's constitution and any shareholder agreement should clearly define:

- Ownership proportions and voting rights;
- How directors are appointed and removed; and
- Matters reserved for council (as shareholder) approval.

Establishing these governance parameters early ensures the new entity has a clear balance between commercial independence and council oversight.

**2. Incorporation and Legal Formalities**

Once the governance structure has been designed, the next step is to formally establish the company under the Corporations Act.

The incorporation process typically involves:

- Preparing and lodging incorporation documents with ASIC;
- Issuing share capital in accordance with the agreed ownership model;

- Appointing directors and (if required) a company secretary;
- Establishing statutory registers and corporate records; and
- Securing an Australian Business Number (ABN) and registering for GST.

For council-owned corporations, a custom constitution is strongly recommended. It can embed council-specific provisions addressing governance, financial reporting, audit and decision-making obligations that reflect public-sector expectations.

Incorporation also provides an opportunity to document funding arrangements, service agreements, and asset or staff transfers from council to the new entity, ensuring operations commence smoothly once the company is live.

Undertaking these steps carefully gives councils confidence that the new corporation is established on sound legal and governance foundations, and ready to deliver its objectives.

**3. Governance and Oversight**

As covered in more detail in our second article of the series, establishing a council-owned company is as much about governance as it is structure. The council acts as shareholder, setting strategic direction, while the board of directors manages day-to-day operations and commercial decisions. A clear delineation between these roles prevents confusion and promotes accountability.

Key governance tools include:

- Delegation of Authority Frameworks: Clearly set out what decisions can be made by the board, management, committees or officers, helping to prevent unauthorised actions or approvals.
- Risk Management Frameworks: Documented processes to identify, assess, and manage strategic, operational, financial, and reputational risks.
- Audit and Finance Committees: Establish committees with defined responsibilities to oversee financial reporting, internal controls, compliance, and risk management.
- Reporting and Communication Protocols: Define the frequency, format, and channels for reporting to the council and other stakeholders, including templates for financial, operational, and risk reports.

A robust governance framework helps councils strike the right balance between autonomy and oversight, allowing the company to operate commercially while protecting the public interest.

**4. Compliance, Risk and Accountability**

Council-owned companies operate within two legal regimes: the Corporations Act and the relevant State or Territory Local Government Act. While the Corporations Act establishes director and company obligations, local government legislation focuses on public accountability, probity and transparency.

Key compliance areas include:

- Financial management and audit obligations under both Acts;
- Procurement and probity principles;
- Insurance and indemnity arrangements for directors and officers; and
- Reporting and disclosure requirements to council and the community.

The challenge is ensuring that a council-owned corporation operates with the efficiency of a private business while upholding the governance standards expected of a public entity. Embedding clear compliance and risk frameworks from the outset builds trust with stakeholders and reduces the likelihood of governance issues emerging later.

**Conclusion**

A council-owned corporation can be a powerful vehicle for delivering strategic, commercial and community outcomes, but only if it is structured and governed correctly from the outset.

We regularly assist councils across Australia to establish and operate council-owned corporations, advising on company formation, governance suites, and compliance under both the Corporations Act and local government legislation.

If your council is considering establishing a council-owned corporation or reviewing an existing one, our team can guide you through each step from concept to incorporation and beyond.

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