

# COBEN Business Model

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# 1. CONTEXT

COBEN (Delivering community benefits of civic energy) is a project co-funded by the North Sea Region Programme 2014 - 2022. COBEN focusses on civic society as the key driver of the transition to renewables-based energy. The project aims to support a shift of energy value chains from centralized utilities to community-owned renewable energy enterprises that provide tangible economic, environmental and social benefits to enrolled citizens. Such benefits include profit sharing, rebates, investment in social services, community infrastructure and climate protection.

A systematic process management approach involving local energy operations, innovation centres, municipalities, SME clusters and cooperatives not only mobilizes local energy potentials in representative North Sea region communities but also demonstrates to later adopters how to make civic energy work. The main tool behind the project's strategy is the "Civic Energy Cycle".

## 1. The Civic Energy Cycle

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The Civic Energy Cycle is a systematic process management approach to facilitating community-driven green energy initiatives that benefit the local residents.

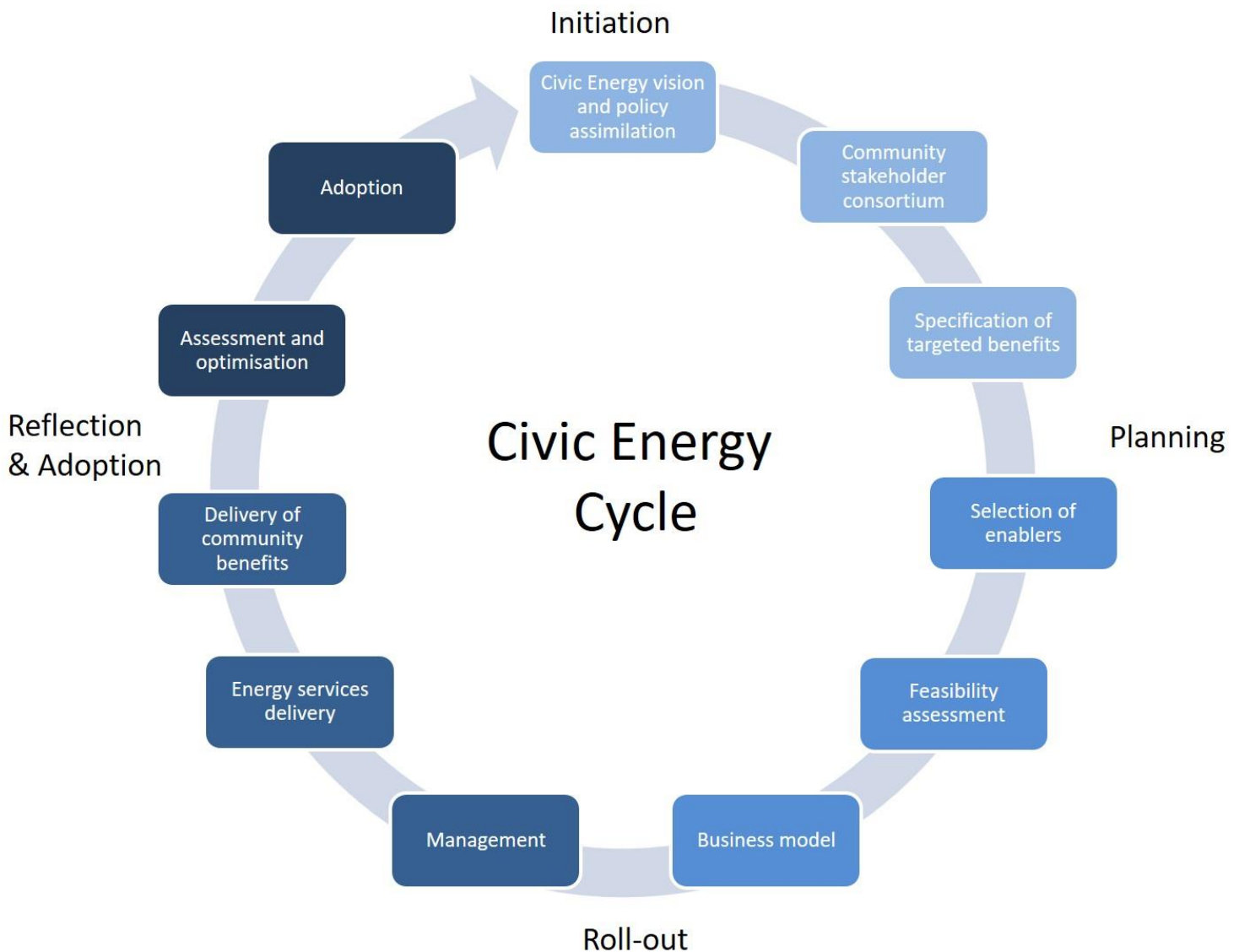


Figure 1 Civic Energy Cycle (McGovern and Klenke. "A process approach to mainstreaming civic energy." *Energies* 11(11), 2018)

## 2. Rationale

The commitment to an energy transition policy, designed to replace the fossil fuel based economy by a renewables-based, low-carbon economy, has been widely proclaimed by the EU Commission (Renewable Energy Directive, 2030 Policy Framework for Climate and Energy), national governments (e.g. the German Energiewende) and the North Sea Commission (North Sea Region 2020). Even more ambitious transition targets have been set in a number of regional energy plans featured in the project, e.g. Energi2020 strategy/ Ringkøbing-Skjern Municipality, 2020 Route map for Renewable Energy in Scotland, Masterplan 100% Klimaschutz/Osnabrück.

Although civil society so far has only been peripherally involved in energy production, civic energy has already become the key driver of the transition to renewables. The EESC European Economic and Social Committee, defines civic renewable energy as “decentralised renewable energy generation owned (at least 50%) or operated by citizens, local initiatives, communities, local authorities, charities, NGOs, farmers, cooperatives or SMEs, creating a stream of local value that can stay within the region”. Civic energy has multiple benefits to offer:

- Civic energy taps local resources that are too expensive to transport
- Small-scale producers have lower profit margins than big utilities, which makes the transition to renewables a viable option
- Local energy production means lower grid infrastructure costs
- 5 out of 6 renewable energy jobs are local
- Community budgets are no longer undermined by volatile energy pricing
- Citizens can tackle climate change

### 3. Workplan

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The project initiative has identified civic energy as the key enabler of the greening of the energy base of the North Sea economy. We aim to make sustainable growth happen. The project work plan is driven by transnational cooperation and clear objectives:

- Promote the uptake of civic energy as the main player of energy transition
- Mobilize local energy potential in pioneering North Sea communities
- Shift energy value chains from centralized structures to communities
- Pilot the development of civic energy enterprises
- Deliver real benefits to citizens from civic energy enterprises and partnerships
- Make civic energy blueprints available for other communities to adopt
- Support transnational cooperation on local energy promotion

In order to apply a Civic Energy Cycle, the project built a business model that let different kind of partners (e.g. SME, energy cooperative, municipality, ...) work together.

In the COBEN project, a SME and energy cooperative, jointly built an “Special Purpose Vehicle” (SPV) for a civic energy project. This document sets out the principles of collaboration in such SPV. This business model is unique in its kind, but can serve as a blueprint for future SPVs with the same purpose.

## 2. STRUCTURING PRINCIPLES OF THE SPECIAL PURPOSE VEHICLE (SPV)

### 1. Risk sharing

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The SPV bears all development and operational obligations and risks. This means in particular that:

- The initial shareholding of the SPV is to be in line with the final investments made by the parties. The SPV will contract the obligations and risks to the project partners, being the Parties (the SME and Energy cooperative) or third parties if need be.
- As contractors of the SPV, the SME and energy cooperative assume 100% of their respective obligations and risks assigned to each Party on the basis of the project contracts (see section 5.2 for example of contract structure).
- The Municipality bears no risk unless otherwise defined in the concession agreement.

## 2. Direct financial participation of citizens

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The SPV abides by the principle of financial participation of citizens. This entails,

- (i) that the SPV in which the citizens invest (directly or indirectly) must own the District Heating Network (DHN) assets, and
- (ii) that the citizens can participate (directly or indirectly) in the decision-making process.

Citizens will have shares in the energy cooperative, which will invest and own shares in the SPV.

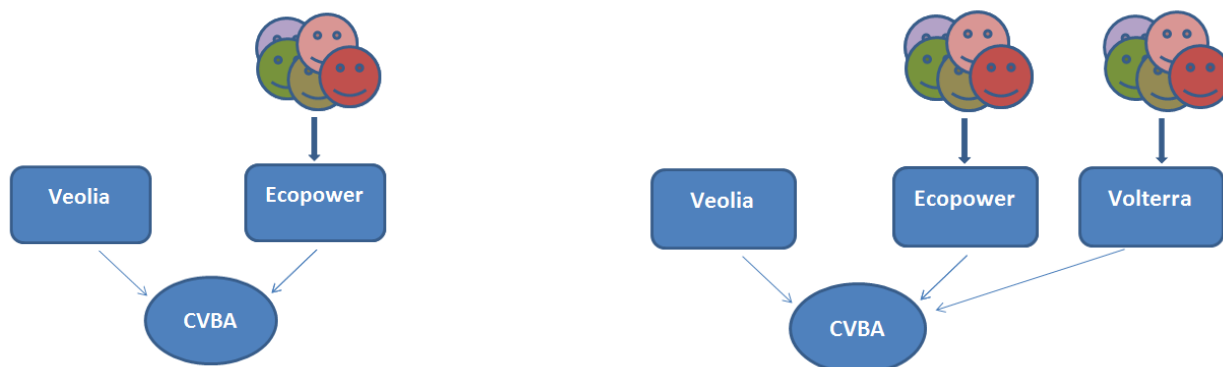
Upon acceptance by both parties, other ICA cooperatives, or other shareholders (such as the municipality) could participate and invest. In such circumstances changes to the decision-making bodies and minority shareholder protections rights (see sections 3 and 4 below) must be considered for the new shareholders.

The SPV will most likely be a cooperative company according to the Belgian Companies Code (CVBA/SCRL), however it will not necessarily have to be certified as adhering to the ICA cooperative standards. The parties shall in good faith negotiate and agree any changes in respect of the form of company (*rechtsvorm*) required as a result of any change in the law.

Possible ownership scenarios can be pictured as follows:<sup>1</sup>

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<sup>1</sup> Note that a CVBA requires at least three shareholders. If the city of Eeklo or Volterra or IVM would become the third shareholder this is not an issue. If none of them would want to become shareholder, to comply with that requirement, one share (of the 65% of Veolia envisaged above) will be held by a different Veolia group entity. In this way nothing changes to the set up mentioned above.



### 3. Consolidation by THE SME

If the SME invests as much as 65%, it means that the corporate structure of the SPV must allow the SME to consolidate the SPV in accordance with the IFRS accounting principles, as interpreted by the SME's auditor (as applied by the the SME Group). Consolidation of the project requires having sufficient control over the SPV.

### 4. Other Guiding Principles of the Corporate Structure of the SPV

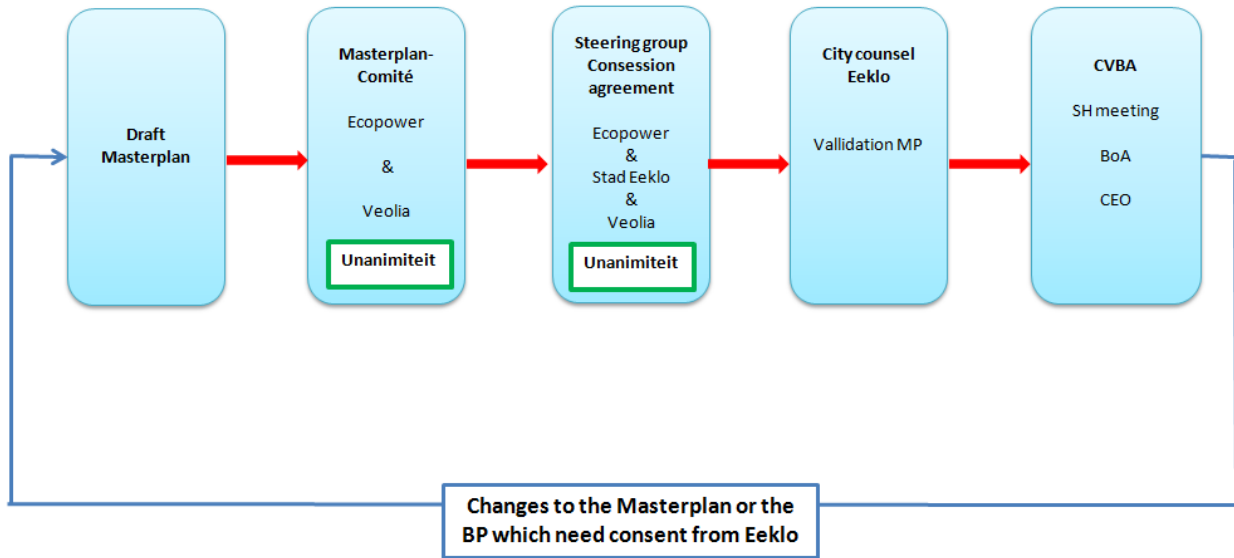
The energy cooperative and the SME agree that the corporate structure of the SPV:

- must allow the project to fulfill the conditions of direct participation (according to ICA principles),
- must fulfill the adjudication criteria of the concession tender.

## 3. THE DECISION MAKING PROCESS

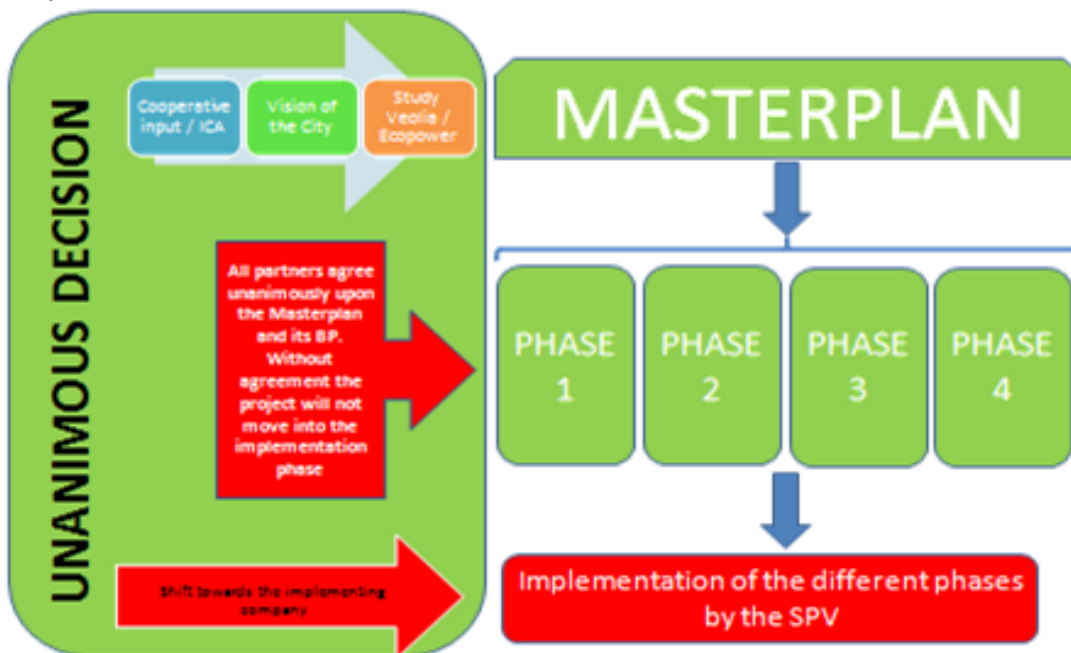
The main principles of the decision-making process are:

- What the SPV will do and how the SPV will do it, will be set out in the Master Plan (including a detailed Business Plan) and in the project contracts, which will be annexes to the shareholders' agreement, which the parties will conclude.
- As a result, this Master Plan and its Business Plan(s), as well as the project contracts, must be accepted and approved by the SME and the energy cooperative, based on unanimity of votes and as equal partners, before implementation by the SPV.



Once up and running, the SPV may have to take implementing decisions or make choices, which might not have been set out in detail in the Master Plan. For such decisions, the SPV must take decisions unanimously. But in the case that unanimity is not possible, decision procedures as set out in chapter 5 of this document will apply.

For the avoidance of doubt, modifications of each Business Plan and of the Master Plan (including any overstepping of the activities covered under the Master Plan), and the project contracts, must equally be accepted by the SME and the energy cooperative (unanimity) before inclusion in the shareholders' agreement and implementation by the SPV, except when otherwise stipulated by the Decision-Making Principles set out below,



## 4. DECISION MAKING BODIES

It is envisaged that the shareholders of the SPV enter into a shareholders' agreement setting out the corporate governance of the SPV. The principles set out in this Chapter 4 are to be further discussed and modified in the event of participation of other parties (e.g. a municipality).

Certain matters (as provided by law or in the statutes) are to be decided by the shareholders meeting.

Certain matters (as provided by law, in the statutes or in the shareholders' agreement) are to be decided by the Board of Directors, including any matter above a certain financial threshold or governed by minority protection rights.

All remaining matters are decided by the Managing Director.

Finally, on top of the division of competences, certain matters are always subject to minority protection rights (Veto) as set out in this chapter below.

### 1. Parties to the Shareholders agreement (pre-SPV-level/Masterplan-comité)

Parties to the shareholders agreement are the parties of the Masterplan-committee, i.e. the energy cooperative and the SME. Together they determine what the SPV will do and how it will be done.

All decisions on this level are taken with unanimity of votes as equal partners.

Decisions to be made on this level are described in point 4.1 and include:

- Drafting and finalizing the Master Plan and its Business plans;
- Adaptations to the Master Plan and/or its Business Plan (including any extension of the activities);
- Drafting, finalizing and adaptations of contracts to be concluded by the SPV, except when otherwise stipulated by the Decision-Making Principles set out below;

### 2. General Shareholders Meeting

- XX% of the voting rights shall be held by the SME and YY% of the voting rights shall be held by the energy cooperative and/or other ICA cooperatives or shareholders (also subject to the applicable investment percentage).
- Meeting 1: Decision making with strong majority  
The aim is always to make decisions with unanimity of votes. In any case a decision can only be made with **XX+1%** of the votes.  
However, if no agreement can be reached or if the required quorum is not met (after deadlock notification) there will be a meeting 2.
- Meeting 2: simple majority of votes is sufficient.
- However, no meeting 2 is possible for those decisions falling under the extensive minority protection rights set out in chapter 5, and thus a **XX+1%** majority decision remains applicable at all times for those decisions (thus, the SME cannot decide alone).
- Quorum: 100% quorum in meeting 1 and 50% quorum in meeting 2.

### 3. Board of Directors

- 5 board members is the preferred option for the SME: 3 board members to be appointed by the SME, 2 to be appointed by the energy cooperative and/or other ICA cooperatives
- Possibly 1 advisory (non-voting) board member appointed by the municipality
- Meeting 1: Decision making with strong majority



The aim is always to make decisions with unanimity of votes. In any case a decision can only be made with 4/5 (4 votes needed, thus the directors appointed by the SME cannot decide alone).

However, if no agreement can be reached or if the required quorum is not met (after deadlock notification) there will be a meeting 2

- Meeting 2: Decision making with a majority of 3/5.
- However, no meeting 2 is possible for those decisions falling under the extensive minority protection rights set out in chapter 5 and thus a 4/5 majority decision remains applicable at all times for those decisions.
- Quorum: 100% quorum in meeting 1 and 50% quorum in meeting 2

Directors from all shareholders in the SPV need to have, to a certain extent:

- Knowledge of district heating projects;
- Knowledge of project management; or
- Knowledge of business plans and financial ratios.

#### 4. Managing Director (“Gedelegeerd bestuurder”)

- The Managing Director is chosen by the members of the Board.
- Next to the Managing Director, a deputy Managing Director, will be appointed chosen from a list presented by the energy cooperative. The SME will have a revoking right based on objective criteria.
- The Managing Director decides on day-to-day topics, and in any case not on the rather long list of topics exclusive for the Board, shareholders meetings, or passing a financial threshold.

#### 5. External Representation (signing of contracts):

External representation should ensure flexibility and not include to the Board of Directors. The Managing Director should be given the power to sign and bind the company. Needless to say, the Managing Director must, as a matter of internal corporate governance and liability, sign only if the decision-making process (see above) has been followed.

## 5. DECISION-MAKING PRINCIPLES

Preliminary notes: presented guidelines are only envisaged, if to the extent the SME is the majority investor.

### 1. Pre-SPV/Masterplan-comité

All decisions during the Master Plan and Business Plan (“BP”) drafting phase are taken unanimously by the Masterplan-committee. Those include, amongst others:

- all decisions related to the final approval by the SME, Energy cooperative and the city of Municipality of the relevant BP / Masterplan;
- any decision to amend the agreed Master Plan/Business Plan which needs consent from the City of Municipality (e.g. extension of the envisaged district heating network to a part of the City of Municipality not covered by the initial Master Plan or Business Plan);
- Drafting, finalizing and adaptations of contracts to be concluded by the SPV, except when otherwise stipulated by the Decision-Making Principles set out below.

One exception: If, after finalization of a BP, the SME or energy cooperative wants to continue to the SPV-phase and the other party does not, the first party can initiate steps to receive the approval of the municipality to continue the phase without the other party.

Table I below provides a non-exhaustive list of decisions requiring unanimity.

**TABLE I - DECISIONS TO BE TAKEN IN THE MASTERPLAN-COMITÉ**

	<b>Actions or decisions Masterplan-committee</b>	<b>Unanimity</b>	<b>remarks</b>
1.	Conclusion of concession contract	x	
2.	Approval of Masterplan, including a BP, with detailed stages of development and changes thereto which need approval of Municipality	x	
3.	Approval of the project contracts as indicatively listed below	x	
4.	Changes to production matrix and energy mix (including items related to back-up)	x	Governed by contracts between SPV and shareholders: will be set out in the production- agreement
5.	Principles on how to construct, connect, ...	x	
6.	- Safety rules, environmental protection, , ...	x	Through DBOM-contract
7.	- Corporate Social Responsibility	x	Through concession contract and shareholders agreement
8.	- How to maintain Through O&M contract, on the basis of which the SPV may define the way of maintenance.	x	
9.	Decision on extension of activities under the MP/BP. In accordance with the concession contract, each extension of the MP/BP will have to be approved by the City of Municipality and a specific domain concession (or a specific extension of the then existing domain concession) must be granted.	x	

The following contracts and documents should in principle be signed before incorporation of an approved business plan in the SPV or, as the case may be, before an amendment of the BP becomes effective (in bold in Dutch):

1. **Articles of association (Statuten);**
2. Shareholders' Agreement (with management contract as chapter of SHA);
3. Shareholders loan contract;
4. Heat production contract between the SME, energy cooperative, or third parties on the one hand, and the SPV on the other hand as supplier, subject to mutual agreement in the Master Plan phase;

5. **Heat production connection contract**
6. **Supplier services contract between Energy cooperative and SPV as supplier;**
7. DBOM-contract ( Design Build Operate and Maintain ) for heat network between THE SME and SPV as grid operator;
8. **Heat connection and supply (template) contract between SPV as grid operator and supplier.**

Remark: There's no heat access contract because the SPV is both grid operator and supplier.

It is understood that compensations of all contracts concluded by the SPV (O&M, heat production, heat connection, supplier services, ...) must be in line with standard market practices, must be at arm's length and must be in line with the requirements and conditions of the relevant BP.

## 2. SPV

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### TABLE II - DECISION TO BE TAKEN IN THE SPV

The General guideline is that the SPV implements the approved MP/BP and concludes the project contracts that follow the MP/BP. Changes to the MP/BP that require consent from Municipality must return to the Masterplan-committee. All other changes to the MP/BP or project contracts as stipulated by the Decision-Making Principles set out below, are submitted to unanimity in the SPV

Once a BP for a certain phase is agreed upon, investments will be done and the relevant BP will be implemented by the SPV, where the first step is to have an internal meeting with unanimity requirement. If that meeting does not result into an agreement (deadlock), only then table II will be applied, in which the energy cooperative is given large veto rights as minority shareholder. (Table II below)

Implementing decisions can be controlled by one party, except when otherwise stipulated by the Decision Making Principles set out below, even though consultation of the other is always required and even though unanimity is always strived for.

The exact list of such decision and thresholds will need to depend on the BP itself and will thus further be discussed during Masterplan-phase.

An important principle applying to the Table II below is that the protection of the minority shareholder is strong, meaning that any action triggering a veto right, falls under the veto right, even if it also falls under a category which does not give a veto right.

Furthermore, any existing contract will limit the freedom of the SPV and thus limit any form of control of THE SME over the SPV. Finally, the SPV will have a corporate purpose which is limited and in any case limited to matters relating to the District Heating Network in Municipality, and more precise geographically limited to the domain concession(s) as granted by the city of Municipality.

### Minority Protection Rights (veto rights)

The exact numbers and thresholds will be further discussed once the MP/BP is established.

	<b>Action or decisions by the SPV</b>	<b>Full control of THE SME in meeting 2 (no veto of Energy cooperative, only advice)</b>	<b>No meeting 2-regime (de facto veto for minority shareholder)</b>
1.	Decisions on how to maintain the District Heating Network (DHN)	x	
2.	Any investment within the scope of the BP, but not foreseen in the BP to replace existing infrastructure of the DHN exceeding EUR 1 Million		x
3.	Final decision whether or not to put tubes( limited through concession agreement )	x	
4.	Putting tubes in another neighbourhood		x
5.	Serving another street than planned in the same neighbourhood	x	
6.	Left or right of the street	x	
7.	Investment not foreseen in the BP, outside the scope of the domain concession, or outside the social purpose as set out in the statutes		x
8.	Additional investments not foreseen in the BP and exceeding 50K Euro and which another company placed in the same circumstances would not reasonably take		x
9.	Overrun of total operating costs foreseen in the BP with more than 100k€		x
9b	Overrun of an operating cost foreseen in the BP and which is more than 20% of foreseen amount and more than 20k€		x
10.	hiring personnel (normally none foreseen in SPV)		x
11.	Annual Budget approval +20%/-20% of foreseen amount as foreseen in BP / MP		x
12.	Approval of annual accounts	x	
13.	Giving discharge to directors		x
14.	Appointment and dismissal of THE SME-nominated ( <i>voorgedragen</i> ) directors	x	
15.	Appointment and dismissal of Energy cooperative-nominated ( <i>voorgedragen</i> ) directors		x
16.	Capital increase		x
17.	Capital decrease		x

18.	Exceeding a certain debt ratio (debt over capital) by taking extra debt		x
19.	Conclusion of contracts as foreseen in BP	x	
20.	Conclusion of contracts (or amendments) with non-shareholders above EUR 400 thousand total contract value per instance and aggregated per counterparty		x
21.	Conclusion of contracts (or amendments) with shareholders, except contracts within ordinary course of business, at arm's length and resulting in an overall obligation of the SPV to a shareholder lower than EUR 50,000		x
22.	Amendments to the concession contract		x
23.	Sale of property above 25k€		x
24.	Sale of property not at market prices		x
25.	Decisions not yet falling under any other unanimity requirement and more than 2 M euro.		x
26.	Any decision once the profitability of the SPV is too low (to be defined as e.g. exceeding a certain debt ratio (debt over capital) by incurred losses or a total IRR of updated BP falling below 4%)		x
27.	Any change in the activities or operations of the SPV.		x
28.	Any decision to amend the organizational documents of the SPV, to reduce or increase its capital, to issue or repurchase shares of the SPV or to issue bonds or any security including any security convertible to shares of the SPV.		x
29.	Any decision to issue a guarantee or to grant a security interest over assets of the SPV in excess of a financial threshold to be agreed or, regardless of amount, where the liabilities of an entity other than a subsidiary of the SPV are guaranteed or secured.		x
30.	Use of profits or provision not compliant with provision policy as determined in the Share Holders Agreement ( SHA )		x
31.	Distributions of dividends not compliant with the SPV's dividend policy as determined in the SHA.		x
32.	Any decision to incorporate or invest in a legal entity.		x
33.	Any decision to liquidate, wind up, dissolve, or place the SPV in bankruptcy or in a restructuring scheme.		x
34.	Any decision to merge or demerge the SPV or spin off part of its activities.		x
35.	Any merger, de-merger, entry into or termination of any partnership or joint venture arrangement or material profit sharing arrangement that may create joint and several liability or unlimited liability for the SPV.		x

If next to Energy cooperative, other shareholders would step into the capital of the SPV, the list of minority protection rights applicable to them will be limited to the classic minority protection rights, i.e. numbers 22 and 26-33 of the above list. This will be further elaborated during the BP / MP phase.