**Governance Framework Document**

**Document N: Companies Governance Handbook**

Companies Governance Handbook

Introduction

This handbook is owned by the Director of Commercial and Procurement who is responsible for keeping it up to date, relevant and accessible and for arranging relevant training for those involved in working with our companies.

The purpose of this handbook is to act as a practical guide for Nottingham City Council (NCC) members and officers, and staff and board members of entities in which the Council have a controlling interest, in their dealings with each other and with the important business that is conducted by them. Aspects of this handbook may also apply to the following entities, depending on the nature of the Council’s interest in them:

* entities in which the Council has ownership
* entities to which the Council can appoint a representative
* entities with which the Council has a strong association e.g., provision of grants

The governance, structure and processes take account of the latest thinking in local government and in particular, the Lawyers in Local Government (LLG) the Governance of Council Interests in Companies – Code ode of Practice, and the Chartered Institute of Public Finance and Accountancy (CIPFA)’s guidance document produced for the Council. The principle of “comply or explain” is expected in relation to following the requirements of this handbook. That is to say, compliance with the requirements contained here is mandated, unless there is a good, well-argued and documented reason for adopting a different approach, agreed with the Council’s S151 Officer and Monitoring Officer. Constitutional and legal requirements must still be followed, however.

At its heart, this governance model is concerned with demonstrating the transparency and accountability that is essential for all parties to have confidence in each other and to make the best decisions in the interests of all.

**Contents**

Governance Structure 3

Glossary 4

Operating Relationship between NCC and Council Owned Entities (COEs) 6

Governance Documents 7

Governance Roles 9

Major Governance Policies 15

Major Governance Processes 20

Appendix - Guidance Documents 29

**Governance Structure**

**The Council’s Constitution**

The Constitution governs how the Council works and always takes precedence. In particular, it sets out the roles, powers and limits of delegation of the Executive and key committees including Companies Governance, Overview & Scrutiny and Audit committees. The Constitution should be referred to alongside this handbook.

**The COE’s Governing Documents**

Each COE has a set of its own governing documents to meet the requirements of the law and those of its shareholders. Every COE is an independent entity free to operate within the scope of its governing documents. It is important that the distinction between a COE and the Council is clearly understood. The governing documents for each COE are held by the Shareholder Unit.

**Article 10 of the Council’s Constitution - Executive Arrangements (including the Executive Scheme of Delegation)**

Article 10 describes how decisions are made by the Council’s Executive. This includes the Companies Governance Executive Committee (CGEC) and sets out its terms of reference. The authority to make decisions may be delegated to Council Officers.

Where any decision is a Key Decision, they can only be taken in accordance with the notice requirements outlined in Article 13.

**Article 19 of the Constitution – Council Companies**

This Article sets out the principles and governance that relates to COEs. It explicitly states that the Executive acts as the Shareholder (or its equivalent) in respectof all COEs and that decisions can be delegated to officers. Article 19 is freely available to anyone and is, along with the rest of the Constitution, published on the Council’s website.

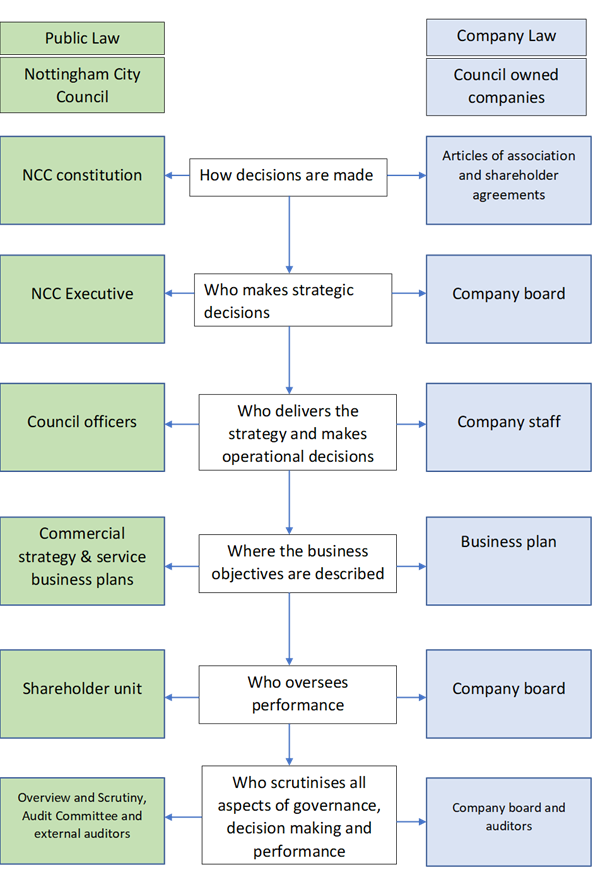
**Commercial and Procurement Strategy**

The Commercial and Procurement Strategy sets the direction and aims of the Council in respect of the entities in which the Council has an interest. The strategy acts as a bridge between these entities and the broader strategic objectives of the Council.

**Glossary**

|  |  |
| --- | --- |
| Articles of Association | Written rules about running the company agreed by the shareholders or guarantors, directors and (where there is one) the company secretary |
| The Chartered Institute of Public Finance and Accountancy (CIPFA) | CIPFA is a UK-based international accountancy membership and standard-setting body |
| Director of Commercial and Procurement | NCC Officer with responsibility for all procurement, contract management and effective oversight and shareholder inputs for COEs |
| Commercial and Procurement Strategy | The Commercial and Procurement Strategy sets the direction and aims of the Council in respect of the entities in which the Council has an interest. The strategy acts as a bridge between these entities and the broader strategic objectives of the Council |
| Companies Act 2006 | The Companies Act was introduced in 2006 to do the following things: to simplify administration. To improve the rights of shareholders. To update and simplify corporate law |
| Companies Governance Executive Committee (CGEC) | To approve and oversee the Council's strategic objectives across the NCC group of companies and to support the development of the Group, in line with the Council's regulations and ambitions |
| Company Chair | The chair’s primary role is to ensure that the board is effective in its task of setting and implementing the company’s direction and strategy. |
| Company Directors | Persons appointed to act as a director in accordance with the Companies Act 2006. They have a number of legal duties, set out in the Governance Roles section of this document |
| Council Appointed Board Members | Board members (also known as directors if the COE is a company), that the Council has the power to appoint |
| Council Owned Entity (COE) | A company, or other entity, in which the council has shares, or for which it is a member |
| Financial Reporting Council (FRC) | FRC is an independent regulator in the UK and Ireland, responsible for regulating auditors, accountants and actuaries, and setting the UK's Corporate Governance and Stewardship Codes. It is due to be replaced by the Audit, Reporting and Governance Authority |
| Lawyers in Local Government (LLG) | LLG is the representational body for all lawyers and governance officers working in local authorities and similar organisations |
| Memorandum of Association | A legal statement signed by all initial shareholders or guarantors agreeing to form the company |
| NCC Constitution | The Constitution is the fundamental document that describes how the Council works. In particular it sets out the decision-making process by the Executive and oversight of the Executive’s decisions by the Overview & Scrutiny and Audit committees |
| Reserved Matters | A shareholders’ agreement and / or articles of association will often set out things which the company should not do without first getting the approval of shareholders. These are known as reserved matters |
| Shareholder Agreement | An agreement entered between all or some of the shareholders in a company. It regulates the relationship between the shareholders, the management of the company, ownership of the shares and the protection of the shareholders. They also govern the way in which the company is run |
| Shareholder Representative | A council officer whose purpose is to represent and protect the Council's interests and to act as a conduit between the Council and the company |
| Shareholder Unit | Comprises the Director of Commercial and Procurement, finance officer, compliance officer and legal officer. The Shareholder Unit acts as the custodian of the shareholder’s interests in the COEs |

**Operating Relationship between NCC and Council Owned Entities (COEs)**

The following diagram show each entity – the Council and a COE – in its own column with their respective governance, decision making & execution, strategy & planning, oversight and scrutiny arrangements in relation to COEs..

**Governance Documents**

**Articles of Association**

These are the written rules that determine how the COE is run and is agreed by the shareholders or guarantors, directors and (where there is one) the company secretary.

NCC envisages that COEs will have articles of associationthat are fit for purpose, and the requirements for each entity in which it has ownership will be considered on a case-by-case basis.

**Shareholder Agreement**

Although the articles of association and a shareholders’ agreement are very similar in nature, and their contents will quite often overlap, the shareholders’ agreement is a confidential document, whereas the articles of association are open for the public to view at Company House. This may affect the decision about what is included in the articles of association and what should be kept private in the shareholders’ agreement.

**Typically, a shareholder agreement will cover the following:**

* The nature of the company and its purpose
* The process for appointing and removing directors
* How decisions about the company will be made
* How disputes will be resolved
* The shareholders’ rights to information
* How shares will be distributed and sold
* Any restraint provisions on shareholders

**Reserved Matters**

Found in the shareholder agreement and / or the articles of association, reserved matters are those things the COE can only do with the agreement of the shareholder(s).

Typically, these include the following:

* + Commencement of any proceeding for the voluntary dissolution, winding up or bankruptcy of the company.
  + Any non-pro rata reduction to the share capital of the company, except as required by law.
  + Approval of and any amendment to the articles of incorporation or by-laws of the company, which amendment would change (A) the name of the company, (B) the jurisdiction of incorporation of the company, (C) the purpose or purposes for which the company is organized, (D) the size of the board of directors or (E) the shareholder approval requirements for shareholder reserved matters.
  + Any appointment to the board of directors
  + Removal of directors
  + Any merger, amalgamation or consolidation of the company with any other entity or the spinoff of a substantial portion of the business of the company.
  + The creation of any subsidiary entity.
  + The sale, conveyance, transfer or other disposal of all or substantially all of the assets of the company, whether in a single transaction or a series of related transactions.
  + Any change in the principal line of business of the company.
  + Entering into any mortgage, lease or other long term financial commitment.
  + The use by the company of any assets as security against any financing instrument

**Governance Roles**

**Company Directors**

**Major duties of a company director**

From Dr Roger Barker, Head of Corporate Governance, Institute of Directors (IoD)

**The company’s constitution**

The first of these duties is that a director must act within their powers under the company’s constitution. The most important part of the company’s constitution is the articles of association. These are an important set of rules for the company and for the board.

**Promoting the success of the company**

The second major duty of a company director is to promote the success of the company. The duty states a director must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the beneﬁt of its members (shareholders) as a whole.

When making decisions, directors must also consider the likely consequences for various stakeholders, including employees, suppliers, customers and communities. They should also consider the impact on the environment, the reputation of the company, company success in the longer term and all of the shareholders (including minority shareholders).

Board decisions can only be justified by the best interests of the company, not on the basis of what works best for anyone else, such as particular executives, shareholders or other business entities. But directors should be broad minded in the way that they evaluate those interests – paying regard to other stakeholders rather than adopting a narrow financial perspective.

**Independent judgement**

The third major duty requires directors to exercise independent judgement. Directors are meant to develop their own informed view on the company’s activities.

Directors should not be delegates who simply implement the commands of other parties (such as major shareholders). Nor should they avoid their responsibility to make independent decisions by relying on the knowledge or judgement of other directors or experts.

A director needs to form their own view, and this may require some effort – especially if they are not already familiar with key aspects of the company’s activities.

**Exercise reasonable care, skill and diligence**

In the past, directors could be appointed purely for their name or reputation, without the expectation that they would actually do any work as a board member. Those days are now over due to the duty for directors to exercise reasonable skill, care and diligence in their role.

The benchmark is that of a reasonably diligent person with the general knowledge, skill and experience that could reasonably be expected from a person carrying out the director’s functions. Also, directors with specific professional training or skills (such as a lawyer or accountant) are held to a higher standard in related issues than less qualified colleagues.

**Conflicts of interest and personal benefits**

The remaining three legal duties relate to the need for directors to avoid or manage conflicts of interest which may affect their objectivity.

If situations arise which impose multiple claims on a director’s attention or loyalty, it is essential that they disclose them to fellow board members. It will then be up to the other non-conflicted board members (or the shareholders, in some cases) to decide how to manage or approve the conflict and maintain the integrity of the board’s decision-making process.

Examples of conflicts of interest include situations where the director has relationships of a business or personal nature with persons or entities that are affected by the company’s activities. It could also relate to situations where the director may be considering taking advantage, on a personal basis, of property, information or opportunity which belongs to the company.

Gifts or benefits from third parties are also a potential threat to a director’s objectivity. Most importantly, directors have a statutory duty to disclose any direct or indirect interest in proposed or existing transactions or arrangements with the company.

**Keeping a record**

How can a director prove they’ve fulfilled these legal duties? One of the important purposes of the minutes of board meetings is to provide a record of the board’s decision-making process. By law, these minutes must be kept for 10 years.

**Council Appointed Board Members**

**Power to appoint and remove board members**

The public law related power to appoint and remove board members is found in Article 19 of the Council’s Constitution. CGEC will exercise this power for appointments to COEs, and the Executive Board will make appointments to other outside bodies.

The company law related power for the council, as shareholder, to appoint and remove board members will be found in the relevant COE’s articles and shareholder agreement.

**Policy for the appointment of directors to COEs**

The performance of each company’s board of directors is critical in delivering the Council’s objectives (which should be clearly set put in the original business case, governing documents, and the annual business plan). The Council follows the LLG Code of Practice and current best practice when making board appointments. The LLG Code of Practice states that:

*10.2 The representatives who are appointed directors by the executive will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, the Government Guidance goes on to suggest that this requirement in a trading company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.*

*10.3 Whilst it will therefore be the norm that officers, not members, will be appointed as directors, this should not prevent the Council from appointing Members as directors where that is considered to be in the best interests of the company and the Council. If Members of the Council are appointed as directors of a company, the following paragraphs should be borne in mind and, in particular, that the member notes that:*

*Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the Council: the Council Member / company director will always have a conflict of interest when it comes to their role as a councillor that must be resolved and resolved in the favour of the company. A Member as director, therefore, must not be a party to making a decision of the Council affecting the company, but may proffer evidence or advice to the Council on the company’s behalf when invited to do so.*

To ensure that the best interest of both the companies and Council are met, the Council will appoint the best possible suited candidate who are demonstrably competent and have sufficient knowledge to undertake the role.

**Process** **for board appointments to COEs**

When a vacancy arises, the following steps will be taken:

(i) The Shareholder Unit will confirm the current standards as set out in the IoD Competency Framework

(ii) The Shareholder Unit will consult with the chair of the relevant company and gather their specific requirements for each new board director. This may cover areas such as industry knowledge relevant to the company’s areas of activity, specific technical knowledge or skills in areas such as finance, commercial, legal, HR, risk etc

(iii) The Shareholder Unit will compile the requirements with HR Business Lead and begin a recruitment advertising process designed to attract candidates with the required skills and experience

(iv) Following receipt of applications, a member of the Shareholder Unit and the relevant shareholder representative will short list candidates’ applications

(v) Once the shortlist is complete, the candidates will be interviewed by a panel comprising a CGEC member, a Shareholder Unit member and the relevant shareholder representative and chair

(vi) The interview will include an evaluation to identify any potential conflict of interest. This will encompass the interests of connected persons, which are defined by the relevant legislation

(vii) The interview panel will recommend the candidates judged as the best suited to the next CGEC meeting for formal appointment

(viii) In cases where the chair is seeking reappointment, the company’s Senior Independent Director (SID) should assume the chair’s role in the appointment process. If a company doesn’t have a SID, another director will be proposed to fulfil that role

**Remuneration**

Appointees will be paid £400 per day for the work they carry out as a board director. If any NCC councillor or officer is appointed, this fee will not be paid.

**Term of appointment to a COE board**

It is up to the Council, as shareholder, to determine how long a council appointed board member should remain in place. It is the intention that the NEDs appointed by the Council may serve two consecutive, three year terms, subject to review on their performance.

**Shareholder Representatives**

For each COE, the Council will appoint a shareholder representative. Each shareholder representative will have sufficient experience, skills and seniority to be able to discharge their duties effectively.

The purpose of the shareholder representatives is to protect the Council's interests and to act as a conduit between the Council and the COE.

The Shareholder Representative will be appointed by CGEC or the Chief Executive and directly accountable to the Chief Executive.

The full role profile is here:



All current and prospective shareholder representatives will undertake training to the same standard and scope of the Institute of Directors Director Competency Framework.

To support the shareholder representatives, a forum will be created to allow the free exchange of ideas, challenges and experiences and to support prospective shareholder representatives as they undertake their training and in handovers from one representative to another. The forum will be organised by the Shareholder Unit.

**Creating a pipeline of shareholder representatives**

The Shareholder Unit will create and maintain a pipeline of prospective shareholder representatives from officers employed by NCC. The council may choose to offer a small financial incentive to interested parties to take on these additional duties. Selection and appointment of officers as prospective shareholder representatives will follow prevailing NCC policies.

**Shareholder Unit**

The Shareholder Unit comprises the Director of Commercial and Procurement, finance officer, compliance officer and legal officer. The team reports into the S151 Officer.

1. **Purpose**

The main function of the Shareholder Unit is to embed the LLG Code of Practice into NCC ways of working by:

* + 1. Acting as the custodian of the shareholder’s interests in the COEs
    2. Establishing with CGEC the outcomes NCC requires of its group companies, frequently testing the group entities against these
    3. Building and maintaining an effective and transparent relationship between the Council and COEs
    4. Ensuring each COE has the right level of challenge and support from the Council
    5. Establishing and maintaining a group environment and culture for COEs
    6. Preparing, gaining approval and implementing a commercial strategy for the COEs within the group

1. **Approach**
2. Keeping up to date with best practice and legislative changes
3. Establishes impartial, factual decision making, based on reliable information and justifiable commercial criteria
4. Operate efficient and practical processes, avoiding duplication with existing Council governance
5. Governance is collectively understood between NCC and the COEs, and is applied accordingly
6. Shareholder compliance points are addressed (and evidenced)
7. A collaborative and pragmatic approach is demonstrated
8. Key events are planned for and emergent issues are managed on a priority basis
9. Awareness between group entities of the collective challenge and opportunities is evident
10. Current year budget and MTFP are regularly monitored and informed

**Major Governance Policies**

**Risk Management Policy**

The companies are responsible for their own arrangements in respect of risk management. NCC require these arrangements to be broadly in line with the FRC’s *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting*. This requirement should be set out in the COEs articles of association and/or shareholder agreement as appropriate.

The shareholder representative is responsible for periodically seeking assurance that the companies are complying with this requirement. To assist the shareholder representative, the following checklist covers the significant elements of the FRC guidance. Detailed evidence of compliance (or otherwise) will be produced in a report and sent in draft to the company for their comments or corrections. A final version will be distributed under the Director of Commercial and Procurement’s guidance.

**Checklist**

|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **Evidence** |
| 1 | There is a clear statement, endorsed by the Board, setting out the company’s willingness to take on risk commensurate with its risk appetite. |  |
| 2 | The risk statement is reviewed at least annually and when there is any significant business change or change to the risk environment |  |
| 3 | There is a clear statement describing the nature and extent of the risks facing, or being taken by, the company which it regards as desirable or acceptable for the company to bear |  |
| 4 | The board is provided with sufficient information to allow it to assess the effectiveness with which risk is being managed or mitigated |  |
| 5 | Risk management and internal controls are integrated with considerations of strategy and business model, and with business planning processes |  |
| 6 | Risk management is demonstrably incorporated into the company’s day to day management and governance processes. |  |
| 7 | The board can demonstrate that the company’s management systems offer adequate assurance that risk is being effectively managed. |  |

**Conflicts of Interest Policy**

**Introduction**

A conflict of interest arises when an individual has competing interests or loyalties, financial or otherwise, where serving one interest may mean working against the other. Company law requires directors to disclose such interests (IoD). The policy adopted by the Council is based on the IoD guidance.

**Directors’ duties – (Section 175 Companies Act 2006)**

Directors must avoid circumstances in which ‘they have, or can have, a direct or indirect interest that conflicts with the interest of the company, or that may possibly conflict with those interests.

This applies to both actual and potential conflicts and both direct and indirect interests. This duty is absolute. There is, however, no breach of duty if the circumstances:

• Cannot ‘reasonably be regarded as likely to give rise to a conflict’. In practice this means that, if the director’s potential interest is so indirect or remote that no reasonable person would see a problem, it can be ignored, and

• the director’s involvement has been authorised by the rest of the board.

If neither exception applies, the conflict must be avoided

In practice, the duty means that a director cannot, without the company’s consent:

• compete with the company for a commercial opportunity; or

• use, for their own purpose, information belonging to the company; make a gain from their role. These restrictions apply even if the company has no wish to pursue the opportunity or is unable to benefit from the information or the gain.

The GC 100 (a group of general counsels and company secretaries working in FTSE 100 companies) give the following examples of situations which may constitute conflict situations for a director:

• being a director of a competitor

• being a potential customer of or supplier to the company

• owning property adjacent to the company’s property, the value of which could be affected by the activities of the company

• having an advisory relationship (for example financial or legal) with the company or a competitor

• being a director of the company’s pension trustee company

• wanting to take up an opportunity that has been offered to, but declined by, the company

• being in a situation where they can make a profit as a result of their directorship whether or not they disclose this to the company; and

• in each of the above situations, being a director of another company and that other company having the relevant relationship with the relevant company or being in the situation described above.

The duty to avoid conflicts continues to apply to a former director as regards the exploitation of any property, information or opportunity which they became aware of at a time when they were a director.

**The Council policy for councillors and employees**

Directorships may create additional potential conflicts of interests for councillors or officers. The way in which these are handled within the Council are the same as other conflicts of interest.

The existing Employee and Councillor Codes of Conduct (Articles 16 and 15 of the Council’s Constitution) require that both officers and members to register and declare interests. In the case of councillors, Section 29 of the Localism Act requires the Monitoring Officer to maintain a register of interests of members of the authority. Interests must be registered within 28 days of becoming a member or being re-elected. Any changes to a councillor’s interests while they are in office must be registered within 28 days of the change having taken place. Details of how this is done are set out in the Councillor Code of Conduct.

Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the Council. Council members will always have a conflict of interest when it comes to their role as company directors. This conflict must be resolved and resolved in the favour of the company. A member (or officer) as director, therefore, must not be a party to making a decision of the Council affecting the company, but may provide evidence or advice to the Council on the company’s behalf when invited to do so. Where a conflict of interest arises, councillors or officers must, in accordance with the relevant Code of Conduct, remove themselves from the meeting/ decision making process and not take any further part.

The Councillor Code of Conduct applies to a member’s activity as a director, except where it directly conflicts with the interests of the company. Where this occurs, the potential conflict must be notified to the company secretary and to the Council’s Monitoring Officer.

**Situational conflicts which will not be permitted**

The Council recognises the need for an absolute separation of roles and duties to avoid conflicts which are deemed to be unmanageable. These include but may not be limited to:

* Executive councillors holding a portfolio who also serve as a director of a company under the control of the same portfolio.
* Councillors taking shareholder decision in respect of a company of which they are also a director, for example members of CGEC.
* Officers who serve as a director of the contracting company for which they are also client. That is to say, having any responsibility or accountability for the performance of services by the company.
* Officers who serve as director for a company for which they undertake the shareholder representative role for the Council.
* Conflicts prohibited by the Council’s constitution (directorships and service on Audit Committee)

**Shareholder Unit controls**

The directorships held by officers and councillors are not static, equally portfolio responsibilities for Executive Councillors, appointments to committees, and duties of officers change periodically. Therefore, in addition to the maintenance of registers of interests outlined in the Codes of Conduct, the Shareholder Unit will review the potential for conflicts upon all changes in directorships and portfolio responsibility / officer duties.

* Maintaining a register of present, impending and potential future conflicts of interest for each council appointed director with a clear record of the avoidance, management and mitigation measures adopted.
* Checking potential conflicts of interests during interviews for new Council appointed company directors .
* Escalation of potential conflicts to the Monitoring Officer and/or Companies Governance Executive Committee, with recommendations for the removal of the conflict.

**Company board controls**

The Council must be able to assure that the boards of the companies operate an appropriate conflict of interest policy and controls. The companies should follow guidance issued by the FRC and IoD.

The broader work on companies’ governance will ensure the chair of each subsidiary and joint venture is able to demonstrate upon enquiry that appropriate measures and process are in place. Controls the Council require as a minimum include: -

• Company secretary (or appointed representative) to supply each new director with a briefing note explaining the legal and company protocols in relation to conflicts and the requirement for the prior authorisation of conflict situations.

• Questionnaire to be sent to all new directors to assist with the identification of any conflict situation. Companies will need to decide if they are going to require directors to check all their connected persons’ interests, which are defined in the legislation but should also cover any corporate connections or wider connections that the company may wish to know about.

• Putting in place a process for authorising conflicts, including the basis on which authorisation is to be granted and the terms/conditions attached – for example, whether a director should be excluded from the board meeting, whether board papers should be withheld, whether the director would be required to step down from his directorship on a temporary basis. Also consider confidentiality issues, including whether, if a company is to release a director from disclosing confidential information relating to a third party, it will want to make sure that the director has an equivalent release from the third party in respect of confidential information relating to the company.

• Consider appointing a board committee to review conflict authorisations (possibly the nomination committee).

• Advise directors that they may need to take independent legal advice if a direct conflict situation arises.

• Prepare board papers setting out details of each director’s conflict situation, for the board then to consider and authorise, if appropriate.

• If the board wishes to pass a written resolution to authorise conflicts, the articles of association must be checked to see if a written resolution can be passed without all the directors, as interested directors cannot be counted.

• Include in the induction process for new directors a briefing on the duties and a questionnaire on their conflict situations.

• Recording of authorisations. Company secretaries to maintain a register of authorisations which can set out the terms and conditions rather than simply rely on board minutes.

**Dividend Policy**

NCC expects companies to distribute profits to shareholders through annual cash dividends following individual company board approval, based on their profitability & cash flow, investment plans, tax considerations or any legal and regulatory factors.

Discussions to take place annually between NCC and the Company to determine the optimum dividend.

**Group Loss Relief Policy**

NCC will maximise the flexibility of group relief from Corporation Tax under Section 5 of the Corporation Tax Act 2010 (CTA 10) wherever possible. This allows a company with trading losses to surrender those losses to another company within its Corporation Tax group to reduce its Corporation Tax liability subject to the rules in place at the time that the losses were incurred.

**Major Governance Processes**

**Council Owned Entities – High Level Activities Cycle**

This diagram sets out the annual activities cycle as well as those activities that will be carried out only once every three years. In the case of a strategic review, this may also be asked for by the Council when any significant change to a company is requested, for example entering a new business area.

More detailed consideration of these activities is found later in this handbook.

**Year one Year two Year three**

* Annual Business Plan
* External Board Effectiveness Review
* External Shareholder Unit Effectiveness Review
* Strategic Review
* Annual Business Plan
* Internal Board Effectiveness Review
* Internal Shareholder Unit Effectiveness Review
* Annual Business Plan
* Internal Board Effectiveness Review
* Internal Shareholder Unit Effectiveness Review

**Business Planning Process**

The companies must operate their business in accordance with the approved business plans, which outline future goals and metrics for measuring progress. The Council will create a template which sets out its requirements for the business plans.

**Business Planning Process**

The Shareholder Unit coordinates the review process across colleagues including the S151 Officer and the Monitoring Officer. Comments will be provided to the shareholder representative to feedback to the company for revisions (if required) within 10 Business Days.

Business plan taken to CGEC for consideration and approval

Consulting with Overview & Scrutiny Committee (optional)

CGEC approves business plan

Overview & Scrutiny call in decision to approve

Business Plan re-drafted as required by

the company

CGEC approves business plan

The shareholder representative will start having conversations with the company in autumn, when setting the budget and forecasting and puts in the February or March CGEC forward plan for approval.

The company creates first draft of the business plan using the template and shares this with the Council at least 30 Business Days prior to the CGEC meeting.

**The Reporting Framework**

The companies will be required to provide regular reports to the Shareholder Unit. This requirement will be set out in the articles of association and / or the shareholder agreement as appropriate.

Monthly:

- Performance against business plan/ budget

- Financial reporting current view of outturn turnover, profit before tax, expected year end cash balance

- Risk management update

- Cash flow forecast for companies with high liquidity risk

- Any shareholder consent matters

Quarterly

As monthly plus

- Conflicts of interest register

- Progress against internal audit and assurance work plans

- Latest cash-flow forecast

Every six months

As quarterly plus

* Revised and updated risk register

Annually

As six-monthly plus

* Results of the board self-assessment / third party assessment
* Associated improvement plans
* Business plan for approval
* Shareholder annual report

**Strategic Review**

In August 2021 CIPFA produced a document for NCC, **Company Oversight: Strategic Principles and Code of Practice.** The Code of Practice sets out the key principles that should be considered each time that a strategic decision is required for one of the COEs and routinely, at a frequency to be determined by the Director of Commercial and Procurement, to ensure the COE remains aligned to the Council’s best interests. The guidance has been approved by the S151 Officer and should be applied with the principle of “comply or explain”. The document may be found in Appendix.

The principle as set out in the Code are as follows:



Responsibility for oversight of each principle is also set out in the Code:



**Board Effectiveness Evaluation**

The companies are responsible for their own arrangements in respect of board evaluation. NCC require these arrangements to be broadly in line with the FRC’s Guidance on Board Effectiveness. This requirement should be set out in the company’s articles of association and/or shareholder agreement as appropriate.

The shareholder representative is responsible for periodically seeking assurance that the companies are complying with this requirement annually with an external review every third year. To assist the shareholder representative, the following checklist covers the significant elements of the FRC guidance. Detailed evidence of compliance (or otherwise) will be produced in a report and sent in draft to the company for their comments or corrections. A final version will be distributed under the Director of Commercial and Procurement’s guidance.

Whether facilitated externally or internally, evaluations should be rigorous. They should explore how effective the board is as a unit, as well as the quality of the contributions made by individual directors. Some areas which may be considered, although they are neither prescriptive nor exhaustive, include the following: -

|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **Evidence** |
| 1 | Does the company board have the mix of skills, experience and knowledge in the context of developing and delivering the strategy, the challenges and opportunities, and the principal risks facing the company? |  |
| 2 | Are the purpose, direction and values of the company clearly communicated and does the Board provide effective leadership in these areas? |  |
| 3 | Are there succession and development plans in place? |  |
| 4 | Does the board work together as a cohesive unit? |  |
| 5 | Do key board relationships support the overall effectiveness of the Board? Particularly chair/chief executive, chair/senior independent director, chair/company secretary and executive/non-executive directors |  |
| 6 | How effective are individual directors? |  |
| 7 | How effective are board committees, and how they are connected with the main board? |  |
| 8 | Is the quality of information provided on the company and its performance sufficient to meet the Council’s requirements? (see Standard Reporting document) |  |
| 9 | Do the quality and timing of papers and presentations to the board support board effectiveness? |  |
| 10 | Is the quality of discussions around individual proposals sufficient and is enough time allowed for proposals to be properly considered? |  |
| 11 | Does the company secretary/secretariat support the board effectively? |  |
| 12 | Is there demonstrable clarity of the decision-making processes and authorities, looking back on key decisions made over the year? |  |
| 13 | Are processes for identifying, reviewing and managing risks (see Risk Management document) in place and functioning well? |  |
| 14 | Can the board demonstrate that it communicates with, and listens and responds to, shareholders and other key stakeholders? |  |

**Shareholder Unit Effectiveness Review**

The Director of Commercial and Procurement is responsible for ensuring the Shareholder Unit is operating effectively. Annually, an internal review will be conducted and every third year an independent review will be carried out by the Council’s audit team.

The effectiveness of the Shareholder Unit will be assessed with reference to the Terms of Reference, the work programme and feedback sought from the companies, shareholder representatives and CGEC.

In addition, the LLG Code of Practice Checklist should be used:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Description** | **Lead Role** | **Supporting activities** | **Assessment of effectiveness** |
| 1 | Are COEs monitored against local authority trading powers? | Activity managed by shareholder representative | Monitoring at scheduled meetings with company |  |
| 2 | Are COEs monitored against local authority financial regulations (e.g. borrowing)? | Activity managed by shareholder representative | Monitoring at scheduled meetings with company |  |
| 3 | Are controlled companies applying standards expected of the local authority? | Activity managed by shareholder representative | Monitoring at scheduled meetings with company |  |
| 4 | Is any management/ shareholder agreement understood and applied correctly? | Activity managed by shareholder representative | Monitoring at scheduled meetings with company |  |
| 5 | Have the COEs adopted a comply or explain approach to UK Corporate Governance Code? | Activity managed by shareholder representative | Monitoring at scheduled meetings with company |  |
| 6 | Has an assessment of adequacy of controls over the company been undertaken and management agreement amended, if required? | Activity managed by shareholder representative | Supported by NCC legal |  |
| 7 | Are Companies Governance, Overview and Scrutiny, and Audit committees informed and engaged with the Shareholder Unit? | Activity managed by Director of Commercial and Procurement and compliance officer | Scheduled plan of work to CGEC and periodic updates to Audit Committee |  |
| 8 | Is induction/ training and support to shareholder representatives provided? | Activity managed by compliance officer | Cohort training scheduled when required |  |
| 9 | Is a Comprehensive Statement (The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009) in place and monitored against business plans? | NCC legal | Process facilitated by shareholder representative |  |
| 10 | Are any financial agreements between NCC and COEs in place and up to date? | Activity managed by finance officer | Process facilitated by shareholder representative |  |
| 11 | Is the company business plan scrutinised annually and taken to CGEC for approval, as per the prescribed process? | Activity managed by shareholder representative | Process facilitated by the Shareholder Unit |  |
| 12 | Where expedient, is a common approach applied across the group – policies eg social value, audit, financial procedures and health & safety | Activity managed by the Shareholder Unit | Supported by the shareholder representative, NCC finance, legal, HR, audit and risk |  |
| 13 | Any common approach is reviewed and kept up to date | Activity managed by the Shareholder Unit | Supported by the shareholder representative, NCC finance, legal, HR, audit and risk |  |
| 14 | Are conflicts of interest identified and managed | Activity managed by compliance officer | Supported by the shareholder representative, NCC governance and legal |  |
| 15 | Do NCC appointed company chairs have a casting vote? | Activity monitored by shareholder representative | Monitoring at scheduled meetings with company |  |
| 16 | Is a remuneration committee in place and operated for each COE? | Activity monitored by shareholder representative | Monitoring at scheduled meetings with company |  |
| 17 | Is an audit committee in place and operated for each COE? | Activity monitored by shareholder representative | Monitoring at scheduled meetings with company |  |
| 18 | Are officer and member indemnities in place – care they checked annually or on change of membership? | Activity managed by shareholder representative | Supported by the Shareholder Unit NCC legal |  |
| 19 | Is board effectiveness reviewed, along with a check on individuals’ skills and capability? | Activity managed by shareholder representative | Annual review: Supported by the Director of Commercial and Procurement |  |
| 20 | Are Shareholder Unit Terms of Reference reviewed? | Activity managed by compliance officer | To be reviewed as part of the Companies Governance Handbook |  |

**Appendix– Guidance Documents**

CIPFA Company Oversight: Strategic Principles and Code of Practice



LLG: The Governance of Council Interests in Companies – Code of Practice



FRC: The UK Corporate Governance Code, July 2018 (Current)



FRC: The UK Corporate Governance Code, January 2024 (Effective 2025)



FRC: Guidance on Board Effectiveness, July 2018



FRC: Guidance on Risk Management, Internal Control and Related Financial and Business Reporting, September 2014

