

Appendix A

Council-owned Company Governance Framework (December 2022)

1. The Council has a shareholding as established in one or more companies to further the social and economic policies of the Council. These were established through the agreement of a business case and are run according to one or more shareholder agreements between the Council and the company concerned.
2. Whilst local authority legislation recognises six forms of companies in which local authorities may have an interest¹, a local authority company generally exists in three forms, which are:
 - a. A local authority trading company, which is established and operates for a commercial purpose (sometimes referred to as a LATCo);
 - b. A local authority company, which is established and operates in a way to comply with the rules for public contracts between entities within the public sector (often referred to as a Teckal company); or
 - c. A company limited by guarantee, not share capital, and is often also established as a community interest company or a charity.
3. What all of these companies have in common, if the Council's shareholding or influence is above a certain level, is that they are known as 'local authority regulated companies' and must abide by a number of legislative requirements if they are to avoid any expenditure in relation to the company being declared as unlawful when audited. These requirements include such matters as payment for any services provided by the Council, access to information, auditors and the company declaring on their website and in correspondence that they are a local authority regulated company, owned by Northumberland County Council². There are additional requirements where the Council's intention is to trade for a commercial purpose, including the content of the business plan for its establishment³. The reasons for this, as set out when the framework for local authority companies was established, is that when a company is effectively under the control of a local authority, the most significant controls that Parliament has laid down for the conduct of local authorities should apply to that company.
4. It is to be recognised that a local authority regulated company, however, is a separate legal entity. Likewise, its board of directors have an overriding duty to the company and not the Council. The company must be given the freedom to undertake its operations to its advantage and in furtherance of its business plan, whilst acting in the interests of the Council as ultimate shareholder. The Council, therefore, needs to hold the company to account, not to manage its work in detail.
5. This balance is achieved through the Shareholder Agreement. This is an agreement that sets out the relationship between Council and company through which the company has the freedoms to operate, recognising that it is a separate legal entity from the Council, subject to the Council retaining decision making and oversight

¹ Part V Local Government & Housing Act 1989

² The Local Authorities (Companies) Order 1995

³ Local Government Act 2003, Localism Act 2011 and the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

through a series of 'reserved matters' which only the Council can decide upon as shareholder. These will normally include the primary decisions for

- entering or agreeing to vary the shareholder agreement;
- appointing directors to the board;
- agreeing the strategic business plan of the company and any variations to it; and
- decisions of investment and financing, including primary contracts, over a certain set amount.

6. As well as in exercising its shares and vote through the shareholder representative, the Council's Leader and Cabinet are responsible for the decision making in respect of the reserved matters, together with decisions concerning investment and contracts between the Council and the company.

7. It is the intention of this Framework that the Council's responsibility for exercising these company functions will in the future be conducted by a Shareholder Committee (or Shareholder Board) of the Cabinet, which will include both the consideration of reserved matters and also in holding a local authority company to account in respect of its performance against its strategic or business plan, the social or financial returns on investment provided back to the shareholder/investor by the company and any contract it may have with the Council. In doing so, it is recognised that:

(a) A Shareholder Cabinet Committee will act in accordance with Executive Procedure Rules and meet in public except where the business is exempt from the press and public in the opinion of the Council's proper officer and the meeting.

(b) A Shareholder Cabinet Committee may also meet in an informal setting as a working group (or in a board form) to consider and discuss matters, including those of a confidential commercial nature, and to make recommendations to any formal meeting.

(c) The Council's Overview and Scrutiny Committee has a role in scrutinising these functions as carried out by the Shareholder Cabinet Committee and wider executive, in respect of which it is noted that a local authority regulated company is under a duty to provide information to allow the Committee to undertake that role.

8. Within this framework, there are a set of expectations that the Council has of its companies. These include that the company:

(a) Will:

- (i) meet the standards set by the UK Corporate Governance Code;
- (ii) comply with those requirements demanded of it by local government legislation, governance and audit and accounting standards; and
- (iii) have regard to the Council's Code of Corporate Governance.

(b) Have a unified board of between five to ten directors, containing at least 50% of whom, excluding the chair, shall be independent non-executive directors, recommended for appointment through open competition against roles descriptions

- (c) Have appointed to the Board at least one director who shall be an officer of the Council and, where there are justifiable reasons for appointment, at least one elected Member in respect of whom such appointment shall:
 - (i) only be so long as they are an employee or elected Member respectively;
 - (ii) be remunerated for such services by the Council through their respective normal employment or special responsibility allowance under the Members Allowances Scheme;
 - (iii) have the costs of their services (as with all services by the Council to the company) met by the company in an arrangement for payment to the Council;
 - (iv) have in place suitable safeguards within the Council's governance arrangements for any conflict of interest that arises from their overriding requirement role to act in the best interests of the company; and
 - (v) have maintained suitable indemnities and insurances by both the Council and the company
- (d) Have in place an arrangement for the provision of company secretarial, human resource, audit or other services to the company by the Council
- (e) Ensure that its Business Plan is to be presented annually for Shareholder approval which should cover a three year period and shall address the Shareholder's priorities as set out in the NCC Corporate Plan, NCC Economic Strategy or other plan as notified by the Council as Shareholder.