

Companies Governance Executive Sub-Committee – 20 October 2020

Subject:	Role of Shareholder Reps – Governance Principles & Good Practice		
Corporate Director(s)/ Director(s):	Chris Henning, Corporate Director of Development & Growth		
Portfolio Holder(s):	Leader of the Council; Cllr David Mellen		
Report author:	Dean Goodburn, Corporate Policy & Performance Officer		
Other colleagues who have provided input:	Daniel Ayrton, Business Development Manager Malcolm Townroe, Director of Legal & Governance		
Key Decision	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Subject to call-in
			<input type="checkbox"/> Yes <input type="checkbox"/> No
Reasons:	<input type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
			<input type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Total value of the decision: N/A			
Wards affected: all	Date of consultation with Portfolio Holder(s):		
Relevant Council Plan Key Theme:			
Nottingham People			<input type="checkbox"/>
Living in Nottingham			<input type="checkbox"/>
Growing Nottingham			<input type="checkbox"/>
Respect for Nottingham			<input type="checkbox"/>
Serving Nottingham Better			<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):			
<p>Nottingham City Council has a diverse range of council owned companies (either wholly or partially), providing services and products as diverse as eco homes, entertainment and public transport.</p> <p>These companies need to balance competing priorities, including their own needs as commercial businesses, the need for democratic accountability, the sponsoring local authority's wider aims and objectives, and compliance with monitoring requirements.</p> <p>Lawyers in Local Government have produced a code of practice for local authorities to help them think through some of the governance issues around companies, including the role of Shareholder Representatives in this.</p>			
Exempt information:			
None.			
Recommendation:			
<p>1. CGESC to note and discuss the initial considerations around the role of the Shareholder Representative for NCC, in light of internal and external good practice, as set out in this paper and the accompanying presentation.</p>			

1 Reasons for recommendations

- 1.1 To provide the CGESC with a brief overview of good practice for company shareholdings and the role of shareholder reps, for consideration in relation to governance of its companies.

2 Background

- 2.1 It is common for Councils that have established Local Authority Trading Companies (LATCs) to form a separate Shareholder decision-making mechanism (it is also considered to be best practice by Lawyers in Local Government (LLG), and other organisations such SOLACE/CIPFA).
- 2.2 LATCs need to strike the right balance between: their needs as a business, the need for democratic accountability, a commitment to the sponsoring local authority's wider aims and objectives, and compliance with that organisation's monitoring, system and data requirements.
- 2.3 The role of the Shareholder Representative is therefore key in helping Councils and LATCs achieve the above.

3 LLG Code of Good Practice

- 3.1 Recognising the need for guidance in this area, the LLG have produced a code of practice for local authorities to help them think through some of the governance issues around companies, which builds on existing codes of corporate governance, for example the UK Corporate Governance Code.
- 3.2 The LLG Code sets out the law and guidance which govern how local authority companies are to be established and run; the way in which a local authority might wish to organise its company interests; how those interests may be best governed according to a set of principles; how decisions will be taken as shareholder; how scrutiny is to be conducted; and how regulatory matters and conflicts of interest may best be managed.
- 3.4 The intention of the code is to provide a reference point to Councils and interested parties (councillors, officers, company representatives etc.) in understanding the requirements of the Council in setting up a LATC and how the governance arrangements for those companies are expected work once set up.
- 3.5 Key points from the LLG code are summarised below:

I. Controls & Freedoms: Governance arrangements should seek to ensure that:

- the company will be provided with sufficient freedoms to achieve its objectives; and
- the sponsoring Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.

II. Relationship, integrity and accountability: Governance arrangements should seek to ensure that:

- the Executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;
- the Executive can evaluate social and financial benefits and returns on investment; and
- the Council's Overview and Scrutiny function(s) are able to exercise their powers in relation to the Executive's decision making in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans, and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.

III. Understanding of roles and potential conflicts of interest: Governance arrangements will seek to ensure that:

- there is sufficient induction, training and other materials in place so that Members of the Council in their role as part of the executive, or of overview and scrutiny, officers of the Council associated with these duties, and directors of the companies themselves understand:
 - their legal duties;
 - stewardship of assets;
 - the provisions of the governing documents;
 - the external environment; and
 - the total structure of the organisations and the venture
- Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies.
- 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.
- However, this should not prevent a Council from appointing Members as directors where that is considered to be in the best interests of the company and the Council.

4 Other options considered in making recommendations

4.1 N/A

5 Finance colleague comments (including implications and value for money/VAT)

5.1 N/A

6 Legal and Procurement colleague comments (including risk management issues, and including legal, Crime and Disorder Act and procurement implications)

6.1 N/A

7 Social value considerations

7.1 N/A

8 Regard to the NHS Constitution

8.1 N/A

9 Equality Impact Assessment (EIA)

9.1 Has the equality impact of the proposals in this report been assessed?

No

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An EIA is not required because no decisions are being taken that will impact/change delivery of council services for our citizens.

9 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

9.1 Lawyers in Local Government – Code of Good Practice for Local Authority Companies.

9.2 UK Corporate Governance Code.

10 Published documents referred to in this report

10.1 N/A.