

CONSTITUTION COMMITTEE

AGENDA



29th September 2025

At 2.00pm

**Committee Room B,
Civic Centre, Hartlepool.**

CONSTITUTION COMMITTEE:

Councillors Bailey-Fleet, Boddy, Buchan, Dodds, Dunbar, Harrison (C), Little, Napper and Thompson.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To confirm the minutes of the meeting held on 29 July 2025.
- 4. ITEMS REQUIRING DECISION**
 - 4.1 Periodic Review of the Constitution - *Monitoring Officer/Director of Legal, Governance and Human Resources*
- 5. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**

FOR INFORMATION

Date of next meeting – 17 November 2025 at 2.00pm in the Civic Centre, Hartlepool.

CIVIC CENTRE EVACUATION AND ASSEMBLY PROCEDURE

In the event of a fire alarm or a bomb alarm, please leave by the nearest emergency exit as directed by Council Officers. A Fire Alarm is a continuous ringing. A Bomb Alarm is a continuous tone. The Assembly Point for everyone is Victory Square by the Cenotaph. If the meeting has to be evacuated, please proceed to the Assembly Point so that you can be safely accounted for.

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

29 July 2025

The meeting commenced at 10.00 am in the Civic Centre, Hartlepool

Present:

Councillor Brenda Harrison (In the Chair)

Councillors: Moss Boddy, Martin Dunbar, Sue Little, Amanda Napper and Carole Thompson

In accordance with Council Procedure Rule 4.2 Councillor Shane Moore was in attendance as substitute for Councillor Bob Buchan

Officers: Denise McGuckin, Managing Director
Hayley Martin, Director of Legal, Governance and Human Resources
Angela Armstrong, Principal Democratic Services and Legal Support Officer

1. Apologies for Absence

Apologies for absence were received from Councillors Quewone Bailey-Fleet, Bob Buchan and Matthew Dodds.

2. Declarations of interest by Members

Councillors Martin Dunbar declared an interest in minute 6 and Councillors Moss Boddy, Sue Little and Carole Thompson declared an interest in minute 5.

3. Confirmation of the minutes of the meeting held on 24 April 2025.

Confirmed.

4. Appointment of Vice Chair, Constitution Committee *(Director of Legal, Governance and Human Resources)*

The Director of Legal, Governance and Human Resources sought nominations for Vice Chair of Constitution Committee. Councillor Moss Boddy was nominated and seconded.

Decision

That Councillor Moss Boddy be appointed Vice Chair of Constitution Committee for the remainder of the municipal year.

5. Periodic Review of the Constitution – Conservation Areas – Replacement Windows and Doors *(Director of Legal, Governance and Human Resources)*

Conservation Areas – Replacement Windows and Doors

The report highlighted that at an Extraordinary meeting of Council on 28 November 2024, it was proposed:

“That the Planning Delegation Scheme be amended to include that any planning application received in a conservation area for replacement windows and/or doors be automatically called into Planning Committee.” This proposal was referred to Constitution Committee given this was a proposed change to the Constitution.

A discussion ensued on the proposal and a number of suggestions were debated, including a potential triage system as part of the approval process. There was a consensus from Members that the process for applying for approval to replace windows and doors in properties across all conservation areas in the town should be practical and reasonable with a consistent approach to enable residents to continue to maintain and enjoy their homes. It was suggested that all applications for replacement windows and doors should be submitted to Planning Committee for full consideration and decision.

It was noted that Council had agreed to re-establish of an Advisory Panel on planning matters relating to conservation areas. In view of this, it was suggested that after a period of six months, the above process be reviewed to ascertain how it had operated and if any links could be established with the Advisory Panel.

Decision

That a report be submitted to Council to amend the Constitution to request that all applications for replacement windows and doors on properties within all Conservation Areas in the town be automatically referred to Planning Committee for consideration and decision.

6. Periodic Review of the Constitution – Conservation Areas – Local Joint Consultative Committee Membership *(Director of Legal, Governance and Human Resources)*

Members were informed that a request had been received to increase the Trade Union Membership on the Local Joint Consultative

Committee (LJCC) to five to allow for a GMB representative to be included within the membership.

It was noted that the membership of the LJCC had been agreed at four Elected Members, four Trade Union representatives and four Officers to facilitate equality across the membership. Members were of the view that the Trade Unions could utilise the allocated membership however was best for them.

Decision

That membership of the Local Joint Consultative Committee remain as was currently stipulated in the Council's Constitution.

The meeting concluded at 10.35 am

CHAIR

CONSTITUTION COMMITTEE

29 September 2025



Report of: Monitoring Officer/Director of Legal, Governance and Human Resources

Subject: PERIODIC REVIEW OF THE CONSTITUTION

1. PURPOSE OF REPORT

- 1.1 To carry out a periodic review of the Constitution in accordance with the provisions set out in the Constitution.

2. ISSUES FOR CONSIDERATION

- 2.1 Following the Senior Management Restructure a number of changes are required to be made to the Constitution to ensure the governance arrangements are fit for purpose and reflect the updated structure of the Council.

Members are asked to consider the following changes:

Renaming of Committee's

To reflect the new directorates, it is proposed that the following Committee's be renamed:

Current	Proposed
Economic Growth and Regeneration Committee	Housing, Growth and Communities Committee
Neighbourhood Services Committee	Neighbourhoods and Regulatory Services Committee
Adult and Community Based Services Committee	Adult Services and Public Health Committee

Members views are sought.

Realigning of services areas

It is recommended that given the change in reporting lines between directorates that service areas are reviewed and updated across the

Committee and officer delegation schemes. For example Public Health services currently report to Finance and Corporate Services Committee and will now move to report to Adult and Public Health Committee.

It is recommended that Members authorise the Monitoring Officer to review Part 3 and make the necessary updates to ensure services report to the relevant committee.

Other Changes:

Shareholder Responsibilities

Members are asked to consider designating Finance and Corporate Affairs Committee the Council's appropriate committee to oversee and exercise the Council's shareholder functions in relation to any wholly or partly owned companies.

It is recommended that:

- a) Finance and Corporate Affairs Committee will exercise the Council's shareholder functions in accordance with the terms of reference and any shareholder agreements.
- b) The terms of reference, company director/shareholder appointments and delegations as attached at **Appendix 1** be approved; and
- c) The identity of Shareholder Representatives and Directors appointed for any company in which the Council is involved may, from time-to-time, need to change and, accordingly, delegates authority to appoint an appropriate senior officer to such roles, as and when necessary, to the Head of Paid Service (Chief Executive) in consultation with the Leader (or, in their absence, the Deputy Leader.

Motions on Notice – Changes to deadline and process

Part 4 (Full Council Rules of Procedure) outlines the process in relation to motions on notice. It would be beneficial to create consistency in terms of the processes, and deadlines, for motions on notice and questions at meetings of Full Council.

On this basis, it is proposed that the below changes be made to Sections 9.2 and 11.1 of the Full Council Rules of Procedure.

Motions on Notice - Section 11.1

- i) Except for motions which can be moved without notice under Rule 12, written notice of every motion, signed by at least five Elected Members, must be submitted to and received by the Chief Executive, or by electronic mail to the Chief Executive before ~~5pm~~ **noon** at least ~~seven~~ **eight** clear working days before the date of the meeting.

- ii) The notice of motion will be entered in a book open to public inspection.
- iii) **Up to three motions can be discussed at each Council meeting, unless the Chair agrees to include more because they're urgent.** ~~The number of motions before an Ordinary Meeting of Council shall not exceed three subject to consultation with the Chair of Council and in accordance with Council Procedure Rule 11.1 (i). Motions will be set out in the agenda in the order in which they were received. Where, subject to rule 11.2, more than three Motions are received, the Motions to be submitted to Council shall be determined in a manner of random selection which will determine also the order the Motions will be listed on the agenda, any remaining Motions on Notice received shall be dealt with at the next ordinary meeting of Full Council.~~

Questions - Section 9.2

9.2 Notice of questions

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than noon ~~on the Thursday of the week before the meeting~~ **at least eight clear working days before the date of the meeting** ~~(or in the case of a meeting held otherwise than on a Thursday, on the expiry of the fifth clear working day before the meeting).~~ Each question must give the name and address of the questioner and must name the Chair of Committee to whom it is to be put (if the questioner is under 16 years of age, the notice must include the name, address and signature of the parent or guardian of the questioner).

Renaming Ward Surgeries

On the 8 September 2025, Finance and Corporate Affairs Committee discussed the Anti-Poverty Strategy and Action plan and how the Council could improve engagement with the Council. A member suggested that the term 'Ward Surgery' was outdated and suggested renaming them to encourage greater attendance.

Members are asked to consider a new name for a 'Ward Surgery'

3. RECOMMENDATIONS

- 3.1 Members are asked to consider the above issues/proposals and make recommendations to Full Council.

4. REASONS FOR RECOMMENDATIONS

- 4.1 To ensure the Constitution reflects the current organisational structure and is fit for purpose.

5. BACKGROUND PAPERS

Hartlepool Borough Council's Constitution
Council Minutes – 20 August 2025
Finance and Corporate affairs Committee – 8 September 2025

6. CONTACT OFFICERS

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Appendix 1

Terms of Reference and Delegations to Finance and Corporate Affairs Committee exercising functions of shareholder committee (the 'Committee').

For the purposes of these terms of reference, the companies referred to are:

- a) [TVERF SPV or such other name as the company may be given upon incorporation or thereafter]
- b) Any such companies as may be added from time-to-time by the Committee.

General Matters

1. Monitor the performance of the companies in relation to their Business Plans and, in particular, the companies' performance:
 - (a) in financial matters
 - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plans; and
 - (c) against the values of the Council.
2. Evaluate and monitor via periodic reports and/or annual reports:
 - (a) performance and progress against business plans;
 - (b) financial and social returns on investment (be that shareholding, loans or direct investment); and
 - (c) risks and opportunities including those arising from joint ventures or new opportunities.
3. Consider matters reserved to the Council for shareholder approval, such as those listed below but more particularly set out in a company's Articles of Association or Shareholder Agreement:
 - (a) The change of the Company's name.
 - (b) The making of any variation to the Memorandum of Association of the Company or the Articles.
 - (c) The amalgamation or merger of the Company with any other company, business or undertaking or the acquisition of any shares in any company or any business or undertaking of any person, the establishment of any Subsidiaries or the participation by the Company in any legal partnership or joint venture (whether incorporated or not).
 - (d) The making of any petition or resolution to wind-up the Company or any application for administration or giving any notice of intention to an administrator unless in any case the Company is at the relevant time insolvent and the Directors reasonably consider (taking into account their fiduciary duties) that the Company ought

to be wound-up.

- (e) The admission of persons as shareholders of the Company.
- (f) Approving amending or terminating any agreement in respect of a transaction or commitment with a value of more than £200,000 relating to the performance or functions of the Company, or such other value as maybe specified in the attached Schedules where applicable.
- (g) Increasing or decreasing or cancelling the authorised or issued share capital of the Company or agreeing to allot any of the share capital of the Company or otherwise reorganise the share capital of the Company
- (h) The percentage of Profit to be distributed as dividends.

(NB The Committee will not have operational control over the company. All decisions regarding the day-to-day operation of the Company its business developments and commercial opportunities and the development and implementation of its internal procedures, rest with the Directors)

- 4. Consider proposals that might be outside of the agreed operational parameters and business plans.
- 5. Exercise oversight on decision making and assurance that the statutory functions of the companies are being properly discharged.
- 6. Any specific matters as set out in the attached Schedules as applicable to each individual company.

Decision making by the Shareholder Representatives:

- 7. The Shareholder Representatives for each company are identified in the relevant Appendices to this Schedule. If, for any reason, the Shareholder Representative is unavailable and a matter cannot wait until their return, the Alternative Shareholder Representative is authorised to undertake their role in full, as set out within these Terms of Reference.
- 8. Where a reserved matter is considered by the Council's Shareholder Representative to necessitate a shareholder decision before a meeting of the Committee is due to take place, the Council's Shareholder Representative, or their appointed nominee, is authorised to perform all functions within the duties and powers of the Committee in accordance with provisions set out below and as shareholder representative.
- 9. The Council's Shareholder Representative is authorised, in consultation with the Leader or, in his/her absence, the Deputy Leader to perform all functions within the powers and duties of that Committee in any case in which the prompt performance of any of the Council's shareholding functions is desirable and necessary, subject to the action taken being reported through delegated officer decision records. In the event that the

Leader, Deputy Leader is not available to consult and the matter is of such urgency that a decision cannot be postponed, the Shareholder Representative shall instead consult with the Chief Executive/Head of Paid Service or, in their absence, the person at the time acting in that role.

10. The Council's Shareholder Representative, or his/her nominee, is further authorised to exercise the Council's vote as shareholder at general meetings of a company and to undertake the following:

- (a) Monitoring the strategic and business plans and approving emergency amendments.
- (b) Approving the appointment or dismissal of company Directors including the Chair.
- (c) Matters relating to the terms and conditions of company Directors.
- (d) Matters relating to the entering of any contracts with company Directors.
- (e) Matters relating to the employment of senior management team of the company.
- (f) Changes to share capital and admission of shareholders.
- (g) Making changes to the nature of the company's business.
- (h) Approving changes to the area in which the company works.
- (i) Altering the company's name or registered office.
- (j) Where required giving any further specific approval to a Shareholder Reserved Matter provided for within the Shareholders' Agreement and in accordance with the timescales required to ensure compliance with the Project Agreement.
- (k) Where required giving any further specific approval to a matter provided for within the approved business plan.
- (l) To act on behalf of the Committee to monitor Performance of the Company.
- (m) To take appropriate action and decisions as the Shareholder as directed by the Committee.
- (n) To take all other decisions as the Shareholder as provided for by legislation or the Company's governance documents.
- (o) To report back to the Committee annually or from time to time on formal decisions made.

11. It is agreed that if there is a conflict or inconsistency between the provisions set out in this Terms of Reference document and the Shareholders' Agreement, the provisions of the Shareholders' Agreement shall prevail. In the event of inconsistency between the Terms of the Reference and an Schedules, the Schedules shall prevail.

Company Specific Provisions

12. Any specific provisions relating to an individual company as set out within the following appendices, or as amended by the Committee shall apply, including specific provisions in relation to such additional companies as may be added from time-to-time by the Committee in accordance with first paragraph of this Schedule. Where such changes occur, this Schedule will be updated within the Constitution accordingly.

Schedules

Schedule 1 - TV ERF LA SPV

Company	Shareholder Representative & Alternative Shareholder Representative
TV ERF LA SPV	<u>Shareholder Representative:</u> Initial appointment to be made by the Chief Executive upon incorporation of the Company. <u>Alternative Shareholder Representative:</u> In the absence of the Shareholder Representative, the Chief Executive and/or any Executive Director are authorised to act as Alternative Shareholder Representative in the event of an urgent decision being required.
	Initial Director Appointments
	<u>Director:</u> XXXXX <u>Alternate Director:</u> XXXXXX

Company Specific Provisions

1) Shareholder Representative

The 'Shareholder Representative' must:

- a) Be a non-elected officer;
- b) Have vested in them the ability to vote on all Shareholder Reserved Matters, subject to these Matters being within the approved thresholds of their delegations; and
- c) Be committed to attend Shareholder meetings, or otherwise participating in any Shareholder' decision-making process, in person.

2) Alternative Shareholder Representative

For any decisions where the Shareholder Representative is unavailable, an 'Alternate Shareholder Representative' shall have been appointed in parallel with the Shareholder Representative. The Alternate Shareholder Representative must:

- a) Be a non-elected officer;
- b) Have vested in them the ability to vote on all Shareholder Reserved Matters, subject to these Matters being within the approved thresholds of their

delegations; and

- c) Be committed to attend Shareholder meetings, or otherwise participating in any Shareholder' decision-making process, in person.

3) Transaction Value within Schedule 1, para 3(g) above

To be set at the level of £ 200,000 or such other value as may be determined by the Shareholder Committee, save for any decision above that level which is specifically authorised within the provisions of this Appendix set out below.

4) Appointment of Directors and Alternate Directors other than directors appointed by the parties:

- i. Each Shareholder shall be entitled to nominate, and shall nominate, one Director being an individual (natural) person who satisfies the criteria set out in clause ii below.
- ii. Each Director must, on appointment and for so long as they are holding office:
 - (a) be a non-elected officer of the appointing Shareholder;
 - (b) have vested in them by their appointing Shareholder the ability to vote on all Board Reserved Matters; and
 - (c) be committed to attending board meetings, or otherwise participating in any other Directors' decision-making process, in person.
- iii. An Alternative Director shall be nominated who:
 - (a) satisfies the criteria set out in clause f)ii. above;
 - (b) shall be entitled to receive notice of all Board meetings and of all proposed Directors' written resolutions which their appointing Director is entitled to receive;
 - (c) shall attend in the absence of the Director, and is present at a Board meeting and shall be entitled to vote as the Director would have been entitled to vote had the Director been present at the meeting; and be counted in the quorum at any Board meeting at which the Director is not present;
 - (d) exercise and discharge at that meeting all the functions, rights, responsibilities, powers and duties of the Director in their capacity as a Director; and
 - (e) sign proposed Directors' written resolutions on behalf of the Director.

5) General Management of the Company

The Company's Board:

- a) shall be responsible for the overall direction, supervision and management of the Company and the Business;
- b) shall have full and complete, authority, power and discretion to manage and control the business and affairs of the Company (to the extent contemplated

- by the Board Reserved Matters) and to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company and the Business; and
- c) must ensure that the Business is managed in accordance with the Shareholders' Agreement, the Business Plan, the Budget and the Policies.

The Executive Management (of the Company) shall be responsible for the day-to-day management of the Company and will be responsible for taking decisions in relation to Executive Management Reserved Matters (as defined within the Shareholders' Agreement).

6) Shareholder Authorisations

The Shareholder Representative (and / or the Alternate Shareholder Representative) shall be authorised to issue Shareholder Resolutions, on behalf of the Shareholder (the Council) in respect of the decision for the company to enter into the following agreements:

- i. Waste Supply and Support Agreement;
- ii. Service Level Agreement;
- iii. Secondment Agreement;
- iv. Project Agreement;
- v. Councils' Guarantee of the Project Agreement;
- vi. Novation of the Option Agreement from Hartlepool Borough Council;
- vii. Lease;
- viii. Side-Deed;
- ix. Environmental Deed;
- x. Councils' Guarantee of the Lease;
- xi. Underlease; and
- xii. Such other agreements incidental to the establishment and operation of the company which do not otherwise require approval by the Committee or Full Council.

Appendix 2

Protocol and Guidance for Directors of Council Companies and Joint Ventures

1. Introduction

This guidance is for those who may have a role in connection with the Council's trading companies and joint ventures. It helps them and the Council (as shareholder) to recognise the interests involved and to avoid a conflict between them.

The guidance sets out:

- Why this guidance matters;
- Recognising the different roles;
- Avoiding the problem – the appointment of directors;
- Recognising the interests involved;
- Behaviours, codes of conduct and responsibilities; and
- Handling conflicts of interests

Appendix 1 - further information on the general duties of a company director

2. Why this guidance matters

- 2.1 Being a director of a local authority company requires those appointed to the roles to operate in a different legal framework to that of the Council. It can lead to real conflicts between the duty owed to the company and the interests of the Council.
- 2.2 It can also lead to conflicts of interest on a personal level which makes holding some roles in the Council unviable whilst continuing as a director. It is necessary to make different assumptions about how things operate and what issues you need to have demonstrated you took into account, and what had no influence.
- 2.3 Too often, this is not understood until problems arise, resulting in reputational and financial damage and in some cases, external intervention directly impacting on the Council.

3. Recognising the roles

- 3.1 **Officer of the council:** the first duty of an officer of the Council is to the Council itself, using their knowledge and professional expertise, and the Council's information and resources, to give advice, make decisions under delegation, and to deploy resources to deliver the Council's objectives. This is a contractual duty and may be waived by the Council in relation to officers who are appointed as Directors when they are acting in their capacity as Directors.
- 3.2 **Member of the council:** a member of the Council is democratically elected to represent their communities and may be appointed to the formal roles of bodies within the Council's decision-making structure to make decisions and to share policy on behalf of the Council. Such roles may involve executive decision making or scrutiny. Elected members are under a legal duty to always act in the best interests of the Council. If appointed as a director of a company, they would also be under a legal duty to act in the best interests of the company. This presents a possible conflict of interest which would be impossible to resolve.
- 3.3. **Director of a company:** a director's first duty is to the interests of the company not to the Council. The Institute of Directors' Corporate Governance Guidance and Principles states "an important principle of company law is that directors have a duty to promote the success of the company as a whole. Appendix 1 provides further

information on the general duties of a company director. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/or stakeholders”

- 3.4 By the nature of these various roles, each has an in-built interest, a fiduciary duty to the body concerned. A conflict of interest arises where these roles and duties coincide. Situations can inevitably arise where the same person will be a decision maker or advisor both for the Council and one of its companies. Examples of this includes matters of reporting, contractual discussions, investment requests or resourcing agreements.
- 3.5 Council appointed directors should make themselves available for Council scrutiny committees and other Council governance forums, which oversees the company. They are not obliged to disclose commercially confidential information about the company.

4. Avoiding conflicts

Right person, right role – guidance for the Council in appointing directors

- 4.1 The Council can minimise the risk of a conflict by considering carefully at the outset who it appoints as a director. For example, a particular professional role (e.g. Head of Service) with the skills and experience that such a role requires, may suggest that the post would be an ideal choice. However, this could significantly limit what the postholder is then able to do within the Council as regards decision making, access to information and influence.
- 4.2 In general, the more senior the officer, the more likely it is that their ‘day job’ for the Council may conflict with a company director role or would need to be inhibited to a counterproductive extent in trying to balance the two.
- 4.3 In accordance with the latest LLG CIPFA Solace Code of Practice for Good Governance for Local Authority Statutory Officers, the Head of Paid service (Chief Executive), Monitoring Officer and Chief Finance Officer (Section 151 Officer) **must not hold directorships** on Council owned companies or joint ventures but retain their role to avoid conflicts of interest and act in the public interest and in the interests of the Council.
- 4.4 Personal factors may also present a conflict. For instance, where an Officer or Member (or a relative or close friend of theirs) has an interest in a competitor to the company concerned.
- 4.5 Appointments should take account of:
 - The benefits of appointing independent directors to the entity
 - The need to avoid officers also being appointed to positions within the company, if such eventuality is likely to lead to a conflict of interest
 - Achieving as wide a range of skills as possible relevant to the company’s purpose and aims.
- 4.6 Given the nature of their roles and the likelihood of conflicts of interest it may not be appropriate for certain officers to be appointed as directors and careful consideration should be given by the Council before an appointment is made. Such positions include Corporate Directors and Heads of Service whose service areas relate to the aims of the company.

- 4.7 Prior to the appointment of any officers as directors, consideration should be given as to whether any ethical walls are necessary. For example, restricting an officer's involvement in the 'Council side' of any projects or initiatives that overlap with the aims and activities of the company/joint venture; or their access to confidential information relating to such projects, initiatives and activities. These should be discussed and agreed with the Monitoring Officer.
- 4.8 A Director will also need to be mindful of the sensitivity of the information gained within the company and take care not to disclose this inappropriately within the Council.

5. Recognising potential conflicts

- 5.1 Examples of where conflicts can arise include:
- **No scrutiny of own decisions/performance:** holding a council role which involves potential oversight and scrutiny of the entity, while also holding a position within the entity.
 - **Council decision affecting the company:** an Officer as director making/advising the Council on a decision under delegated powers for the Council, that affects the company. The director could provide information to the Council on behalf of the company if invited to do so.
 - **Personal/private interests:** holding a position as a Director while having a private financial or non-financial interest which may conflict or maybe perceived to conflict with the role. For example, Director (or their relative/close friend) has an interest in a supplier or competitor to the company.
 - **Gifts & hospitality:** Directors receiving benefits from third parties (e.g. potential suppliers to the company) such as gifts and hospitality.
 - **Access & use of information, opportunity:** the exploitation by a director of any asset, information or opportunity related to the company. It could be a breach of a director's duty to the company either to disclose confidential company information to the Council, or to disclose confidential council information to the company. Section 175 of the Companies Act 2000 terms this the avoidance of the "exploitation of any property, information or opportunity" whether the company gains advantage from property, information or opportunity.
- 5.2 Officers may be clear about their roles within the Council and the company. However, they must also be aware of what those roles mean for their use of market sensitive information or other confidential intelligence that might be of interest to the other entity but to which they would not be otherwise entitled. The officer needs to be very clear about which role they are performing and not to disclose or otherwise act on the awareness of any such information in the secondary setting.
- 5.3 Directors should actively consider the potential for conflicts of interest, identify and act to resolve them. This means considering and registering their standing interests at the point of appointment. They must consider the "declaration of interests" item on each council or company board meeting agenda and think through what the business on that agenda means for any interests they may have.
- 5.4 It is also important to consider the sources of information (particularly confidential information) that the Director can access or may receive as part of their roles and the extent to which this is appropriate or requires mindfulness of their fiduciary duties. The same applies to managers who may oversee staff who may be working on projects which may impact their company role. The Monitoring Officer can advise on the potential for conflicts of interest.

- 5.5 Where a potential conflict of interest may arise, then in addition to declaring it at the relevant meeting, the appointee should not vote on the matter.

6. Behaviours, Codes and Responsibilities

- 6.1 Officers are subject to the Seven Principles of Public Life (“the Nolan Principles and to the Code of Conduct for Employees Values Behaviours Framework) This applies not only when acting within the Council but when serving on a Council company. This is in addition to the responsibilities under local government and company law. Regard must also be had to the Articles of Association for each company and the conflicts of interest requirements within them.

- 6.2 In accordance with the Nolan Principles, Officers, even when serving as directors must always demonstrate:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The Code of Conduct for Employees requires Officers to declare any professional or personal relationships with contractors, any financial or non-financial interests which could conflict or be seen to conflict with the council’s interests. Officers must also seek approval before undertaking any outside work, which includes any paid or unpaid work, including voluntary work undertaken in addition to council employment. This includes appointments as Director to a Council company/joint venture.

- 6.4 The Code is also clear that information obtained in the course of employment should not be used to further private interests or improper or commercial gain or for fraudulent or malicious activities.

Articles of Association

- 6.5 Each of the Council’s companies/joint ventures will have its own Articles of Association and these may include their particular requirements for handling conflicts of interest.

7. Handling Conflicts of interest

- 7.1 In matters of reporting, contractual discussion, investment requests or resourcing agreements, there is the potential for the same person to be a decision maker or advisor both for the Council and the company. It will become an actual conflict whenever that scenario occurs in practice.
- 7.2 Company directors have a legal duty to avoid a situation where they have, or may have, an interest that conflicts with the interest of the company. Company law and articles of association do allow provisions for directors and shareholders to authorise a conflict in some circumstances. However, an Officer cannot waive their duty to act in the public interest when exercising their duties to the Council.
- 7.3 This will on occasion create an inescapable conflict of interest between someone’s role as an Officer of the Council and as a director of a company. In practice, once a person is appointed as a director of the company/joint venture, their prime duty is to

the company and their involvement in decision-making/voting on the company board must reflect that.

Process in relation to declaration of conflicts:

- 7.4 The following process should be followed in relation to the declaration of conflicts
- i) **Outset declaration:** Directors to the company should complete a declaration of interests form before their appointment is made;
 - ii) **Training:** training on identifying conflicts should be given to Directors as arranged or commissioned by the Monitoring Officer;
 - iii) **Potential conflicts:** where an Officer considers a potential conflict exists between their Council and their company role, they should confidentially discuss with the Monitoring Officer (or their nominated Deputies) to determine whether a conflict exists on the Council side and with the Company Secretary on the company side.
 - iv) **Declaring the interest:** the Director should follow the Council's and company's normal procedures for declaring and registering an interest. It is important that Officers take full note of the content of agendas and whether the business to be transacted raises any potential conflicts. There will be a point on each agenda where interests should be declared.
 - v) **Stand down from discussion:** having declared a conflict of interest, there should be no taking part in a decision about the issue.
 - vi) **Ethical wall:** in the case of an officer who may have a conflict between their roles, the Monitoring Officer may consider implementing an "ethical wall" between the person and their access to information or their influence towards fellow officers; this would be recorded and proportionate to the circumstance.
 - vii) **Annual update of registers of interest:** there should be an annual reminder to each Officer to update their registers of interest to encourage continued thinking about potential or emerging interests.

Appendix 1 General duties of a company director

The purpose of this appendix is to act as a desk aide for anyone performing the role of a company director to a wholly owned or joint venture.

[Being a company director - GOV.UK](https://www.gov.uk/being-a-company-director)

As a director, you must perform a set of 7 duties under the [Companies Act 2006](#). These still apply if:

- you're not active in your role as director
- someone else tells you what to do
- you act as a director but have not been formally appointed
- you control a board of directors without being on it

Company's constitution

You must follow the company's constitution and its articles of association. These are written rules about running the company, agreed by the members, directors and the company secretary.

The constitution sets out what powers you have as a director, and the purpose of those powers.

Promote the success of the company

You must act in the company's best interests to promote its success. You must consider the:

- consequences of decisions, including the long term
- interests of its employees
- need to support business relationships with suppliers, customers and others
- impact of its operations on the community and environment
- company's reputation for high standards of business conduct
- need to act fairly to all members of the company

If the company becomes insolvent, your responsibilities as director will apply towards the creditors, instead of the company. A creditor is anyone owed money by the company.

Independent judgement

You must not allow other people to control your powers as a director. You can accept advice, but you must use your own independent judgement to make final decisions.

Exercise reasonable care, skill and diligence

You must perform to the best of your ability. The more qualified or experienced you are, the greater the standard expected of you.

You must use any relevant knowledge, skill or experience you have (for example, if you're a qualified accountant).

Avoid conflicts of interest

You must avoid situations where your loyalties might be divided. You should consider the positions and interests of your family, to avoid possible conflicts.

You should tell other directors and members about any possible conflict of interest, and follow any process set out in the company's articles of association.

This duty continues to apply if you're no longer a director. You must not take advantage of any property, information or opportunity you became aware of as a director.

Third party benefits

You must not accept benefits from a third party that are offered to you because you're a director. This could cause a conflict of interest.

The company may allow you to accept benefits like reasonable corporate hospitality, if it's clear there's no conflict of interest.

Interests in a transaction

You must tell the other directors and members if you might personally benefit from a transaction the company makes. For example, if the company plans to enter a contract with a business owned by a member of your family.

Other duties

Other duties you must perform as a company director include:

- not misusing the company's property
- applying confidentiality about the company's affairs

Liability

- Directors owe numerous duties, or are otherwise exposed to the prospect of **personal liability**, under both the Companies Act 2006 and a wide variety of other laws and regulations, such as insolvency, environmental and health and safety legislation.
- Directors may be liable, to their company or to third parties, under assorted legal theories including contract law and tort law.

When Do Directors Become Personally Liable?

Instances when a director may face personal liability for losses include:

- A breach of directors' duties
- On insolvency, in particular, if there is wrongful trading
- Negligent misrepresentation
- Unfair Prejudice
- Criminal wrongdoing, such as misappropriation of funds or fraud
- When the director has personally guaranteed to borrow

Further details can be found on Directors' duties: general duties under the Companies Act