

Council Companies: "Code of Guidance"

The City of Edinburgh Council

29 June 2006

1 Purpose of report

- 1.1 To propose a revised "Code of Guidance" to ensure best practice in the monitoring and corporate governance of the Council's Companies, following the report to the Executive on 20 December 2005 on the Review of Local Authority Company Governance and Monitoring.
- 1.2 To highlight the achievements of the arms length companies set up by the Council to provide Council services and / or deliver policy objectives.
- 1.3 This report does not deal explicitly with the decisions taken by the Council at its last meeting, although much of this report is relevant to them. Further reports on outstanding issues will be submitted to the Council at a later date.

2 Main report

- 2.1 For many years now the City of Edinburgh Council has taken an innovative approach to the delivery of strategic objectives and major development projects. This has found expression through the establishment of arms length shareholding companies, joint ventures and companies limited by guarantee.
- 2.2 Much has been achieved through this approach. It is now over ten years since the development of Edinburgh Park, the completion of the EICC and the development of the Lothian Road sites. Currently, major activity is taken place at the Waterfront and Shawfair. Plans are well advanced to extend the EICC and, through TEL and tie the development of the Edinburgh Tram project is moving ahead.
- 2.3 Through the City Development Department, the Council is a shareholder in fourteen companies (nine wholly owned and five joint ventures). Shares in four of the companies are held by the Council via CEC Holdings Ltd, a non-trading holding company, established to maximise tax efficiency. A summary of the shareholding structures of the companies is attached. (Appendix One)

The Scope of the Companies

- 2.4 These companies have net assets of circa £100 million and are delivering projects with a total value of £2 billion. Annual turnover is about £100 million.
- 2.5 Over the next 15 years, the property companies from within this portfolio will deliver over 15,000 residential units, including around 1,500 affordable homes. Major developments will transform large brown-field sites and regenerate communities with the provision of new schools, leisure and employment opportunities in areas such as Craigmillar, North Edinburgh and Shawfair.
- 2.6 From the commercial perspective the companies have directly built over 1.5 million sq. ft. of commercial office accommodation. A further 1 million sq. ft has been sold for City Centre brown-field developments. An additional 3.5 million sq. ft of office space has planning permission, or is part of the wider master-plans for these development areas. In addition, £150 million worth of economic impact has been generated from conference & business tourism and the impact to Edinburgh is now over £25 million per annum.
- 2.7 Edinburgh has a highly successful, publicly owned bus company, which has increased patronage at record growth levels of over 25% over the last five years. The City is also progressing major transport systems and infrastructure through the establishment of two dedicated Transport Companies.
- 2.8 Provision of equity loans to small and medium size enterprises has resulted in over 30 investments, totalling over £2.5 million, with project values in excess of £32 million. This has helped create or secure over 1,300 jobs, whilst also returning the Council's initial investment.
- 2.9 The Council has also been instrumental in establishing and/or otherwise supporting a number of companies, usually limited by guarantee, which have delivered a range of festivals, events, markets, City Centre initiatives and Social Housing provision. A summary of the key companies limited by guarantee is also included in the attached Appendix One.
- 2.10 As an example of the value of these companies, major new Public Realm works with capital value in excess of £17 million have been driven by Edinburgh City Centre Management Company. Ongoing feasibility studies are investigating the possibility of a major redevelopment of the City Centre, which could result in a regeneration project of around £1 billion.

Council Management of the Companies

- 2.11 The scope, size and management requirements of the individual companies vary widely. To provide assistance to those Companies for which City Development is the lead department, a Companies Unit was established (within the Economic Development Division of the Department) in March 2001. The Unit has performed an important liaison and strategic development role in relation to the major shareholding companies.
- 2.12 In December 2001 the Executive of the Council approved a 'Code of Guidance and Conduct' governing the relationship between the Council and its Companies. This provided a structure for assessing the need to establish a company and for monitoring its operation, to protect the Council's interests and to ensure that the company's objectives are being met.

- 2.13 More recently a Council Companies Strategy Group has been established to monitor the performance of the shareholding companies and to ensure that best practice in relation to the principles of corporate governance is being demonstrated.
- 2.14 In December 2005 the Council approved a report on Local Authority Company Governance and Monitoring which recommended the implementation of specific improvements to corporate governance arrangements, including the production of an updated Code of Guidance.

Updated Code of Governance

- 2.15 Staff from within the Companies Unit, Legal Services Division, Internal Audit and the Performance Development Unit have now drafted an updated Code of Guidance relating to the relationship between the Council and companies of which it is a major shareholder and/or to which it grants significant funding.
- 2.16 The Code falls into two parts. The first deals with determining the Council's relationship with companies through Shareholders' agreements and/or Operating Agreements. The second part details the companies' internal regime requirements, necessary to ensure the provision of good corporate governance.
- 2.17 To support the implementation of the revised code, the companies will be expected to complete a self-assessment questionnaire, on an annual basis, in order to assess their position in relation to corporate governance best practice.
- 2.18 The revised Code of Guidance document is attached at Appendix Two to this report.

Role of CEC Holdings

- 2.19 The report to the Executive on 20 December 2005 on the Review of Local Authority Company Governance and Monitoring outlined the option of an enhanced role for CEC Holdings, to include the monitoring of company performance and oversight of Corporate Governance arrangements. It was agreed that the role of the Development Company's Team and their relationship with CEC Holdings, along with the composition of the CEC Holdings Board, would need to be reviewed if this expanded role was adopted.
- 2.20 Another option reported as requiring further consideration was a move towards recharging more of the Council's costs to the company, in order to achieve taxation benefits.
- 2.21 A review of these options is now ongoing and will form the subject of a further report to the Council Executive.

3 Financial Implications

- 3.1 There are no specific financial implications arising from the proposals.

4 Recommendations

4.1 It is recommended that the Council:

- notes the achievements of Council Companies as an effective means of providing Council services and / or delivering policy objectives;
- approves the updated Code of Guidance;
- requires the prompt adoption of the updated Code of Guidance for corporate governance by the major shareholding companies and the companies limited by guarantee.



Tom Aitchison
Chief Executive

21/6/06.

Appendices	Appendix 1: Development Companies: Shareholding Structure Appendix 2: Proposed Revised Code of Guidance
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Wards affected	All
Background Papers	"A Framework for the Governance of Council Companies" (including Code of Guidance and Conduct governing the Relationship between the City of Edinburgh Council and its Companies). Report by the Chief Executive to the Executive of the Council - 18 December 2001 "Review of Local Authority Company Governance and Monitoring" Report by the Directors of City Development, Corporate Services and Finance to the Executive of the Council. - 20 December 2005.

City of Edinburgh Council

Development Companies: Shareholding Structure.

Wholly Owned	Council Shareholding		Other Shareholders	
	Council	CECH		
CEC Holdings Ltd.	100%			
EDI Group Ltd.		100%		
Edinburgh Film Focus #	100%			
EICC Ltd.		100%	(Nominal shares held by SEE&L and RBS)	
Pacific Shelf 825 Ltd.	100%			
PARC Ltd		(CECH) 50% (EDI) 50%		
Projects (Edinburgh) Ltd.	100%			
Transport Edinburgh Ltd	100%			
Tie Ltd.	100%			
Partly Owned				
LIFE	50%		Royal Bank of Scotland	50%
Lothian Buses plc	91%		Other Lothian Councils	9%
New Edinburgh Limited		50%	The Miller Group	50%
Shawfair Ltd	37.5%		Midlothian Council	37.5%
			The Miller Group	25%
Waterfront Edinburgh Ltd	50%		SE:E&L	50%

Companies Limited by Guarantee

Edinburgh City Centre Management Company	In Year to March 2005 Council contributed 20.8% of total income.	CEC Funding Total Income	£250k £1,204k
Edinburgh Convention Bureau Limited	In Year to March 2006 Council will contribute est 40.3% of total income	CEC funding: Total income	£260k £645k.
Edinburgh International Festival Society	In Year to March 2005 Council contributed 23.0% of total income.	CEC funding: Total income	£1,814k £7,821k
Edinburgh Science Foundation	In Year to March 2005 Council contributed 19.9% of total income.	CEC funding Total Income	£181k £909k
Edinburgh Leisure	In Year to March 2005 Council contributed 40.7% of total income.	CEC funding: Total income	£7,783k £19,141k

Companies funded by CEC

Festival City Theatres Trust	In Year to March 2005 Council contributed 13.2% of total income.	CEC Funding Total Income	£819k (inc £200k additional grant) £6,187k (T/over+ Revenue grants)
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Edinburgh Film Focus: Edinburgh, Lothian & Scottish Borders Screen Industries Office Ltd.

CODE OF GUIDANCE

RELATING TO

- (A) RELATIONSHIP BETWEEN THE CITY OF EDINBURGH COUNCIL AND COMPANIES OF WHICH IT IS A MAJOR SHAREHOLDER AND/OR TO WHICH IT GRANTS SIGNIFICANT FUNDING.
- (B) HOW THESE COMPANIES DEMONSTRATE GOOD CORPORATE GOVERNANCE.

INTRODUCTION

This code relates only to companies. Some of these companies are shareholding companies, some are limited by guarantee and some have charitable status

The Code falls into two parts. The first part "A" deals with what the Council will have in place to determine the Council's relationship with the company. The second part "B" deals with what the Council expects the internal regime of the company to consist of in order to provide good corporate governance.

Significant funding is funding which the Council gives to a company without which that company would not be able to continue to operate or otherwise meet the objectives for which Council funding is provided.

(A) RELATIONSHIP BETWEEN THE COUNCIL AND COMPANIES IN WHICH IT HAS A MAJOR SHAREHOLDING AND/OR TO WHICH IT GRANTS SIGNIFICANT FUNDING.

1. Company Monitoring Officer

The Council requires that all companies in which it has an interest are monitored on behalf of the Council.

The Council will appoint a Company Monitoring Officer for each Company. The Council will inform the Company who is to be the Company Monitoring Officer. The overall purpose of the Company Monitoring Officer is to ensure that the Council's interests are being safeguarded. The Company will assist the Company Monitoring Officer to achieve this purpose.

The Company Monitoring Officer will not be a Director of the company he/she is to monitor. The Council will keep a register of Company Monitoring Officers.

Where Council Officers have a liaison and support role with companies such officers will not be the Company Monitoring Officer.

The Company Monitoring Officer will ensure that the requirements contained in the Operating Agreement or/and Funding Agreement between the Council and the Company are implemented.

The Company Monitoring Officer will ensure that the Company is at all times adhering to best practice in relation to corporate governance of shareholding companies as informed by *The Combined Code: Principles of Good Governance and Code of Best Practice*. (based on The Cadbury and Greenbury Reports).

The Company Monitoring Officer will ensure that the other requirements of this Code are fulfilled.

The Company Monitoring Officer will receive from the Company quarterly reports on items identified in the Operating Agreement and any other aspect which is of interest/concern to the Company Monitoring Officer. The Company Monitoring Officer will be responsible for ensuring that bi-annual reports are made to the Council on the performance of the Company.

The Company will provide to the Company Monitoring Officer all agendas and papers for Board Meetings at least five clear working days prior to each Board Meeting being held.

The Company shall submit to the Company Monitoring Officer, within four months of the Company's financial year end, or 31 May whichever is the earlier, draft annual accounts together with an annual review of pattern of expenditure.

For companies whose financial year end is not 31 March interim accounts to 31 March must also be submitted if required by the Council or the Company Monitoring Officer.

The Company Monitoring Officer will ensure that where commercially sensitive information relating to the Company is to be considered by the Council this will be done in private and will be treated confidentially by all Officers subject always to the requirements of the Council to comply with provisions of the Local Government (Access to Information) Act 1985 and to the Freedom of Information (Scotland) Act 2002 and all other obligations, guidance and other provisions concerning access to information.

The annual Business Plan will be provided by the Company to the Company Monitoring Officer the earliest of two months prior to the start of the Company's financial year or by the date stipulated in the operating/funding agreement in order that the annual Business Plan may be approved by the Council. If approval is not granted by the Council prior to the start of the Company's financial year the Council may withhold financial and any other assistance usually granted to the Company.

A checklist of all items to be sent to the Company Monitoring Officer is detailed in Appendix 1a.

2. Operating Agreement/Funding Agreement

INTRODUCTION

Each Company will have with the Council, or a body nominated by the Council, an Operating Agreement or/and a Funding Agreement.

An Operating Agreement will be required for each company of which the Council is a major Shareholder. Each such Company has particular requirements and the Operating Agreement will be adjusted to reflect this. However the requirements listed below will form the basis of all Operating Agreements and are the minimum the Council would expect.

A Funding Agreement will also be required where significant funding is being granted by the Council to the Company.

In the case of a Joint Venture there will be a Shareholders Agreement between the Council and the other Shareholder(s) of the Company which will include an undertaking that the Operating Agreement with the Company will follow the terms of this Code.

OPERATING AGREEMENT

With respect to Operating Agreements these will include the following:

1. A statement detailing the purpose and objects of the Company.
2. Provision for an annual Business Plan to be produced which will include a three year rolling Business Plan containing financial and performance targets.

The financial targets will include three year cash flow, profit and loss projections and balance sheet with sensitivity analysis and risk assessment and contingency.

The performance targets are to be measurable.

There will also be included any other information considered relevant by the Company Monitoring Officer and/or the Council.

3. An undertaking that the Company will keep proper accounting records and will comply with good accounting standards and practices. The Company will deliver to the Company Monitoring Officer a copy of the audited accounts no later than six months after the previous financial year or by 31 August following the company financial year end whichever is the earlier.
4. An undertaking that the Company will produce monthly management accounts. The Company Monitoring Officer will be sent these management accounts monthly or each quarter as requested.
5. If appropriate, annual provision for how dividends are to be distributed and how surpluses are to be dealt with.
6. Details of a Procurement Strategy ensuring transparency, openness and best value for money.
7. A procedure for identifying a Director or company official who will be responsible for financial matters within the Company and thereafter reporting to the Company Monitoring Officer as required by the quarterly reports at 13 below.
8. An undertaking that a Schedule of Notifiable Interests for the Directors as shown in Appendix 2 attached to the Code will be kept by the Company. The Company will report quarterly to the Company Monitoring Officer giving updates to the Schedule.

9. An undertaking that the Company will adopt, implement and review annually policies regarding
- risk management and maintenance of a risk register
 - whistle blowing,
 - fraud and irregularity,
 - formal recruitment and selection policies,
 - Directors review of internal control,
 - Accounts Commission/COSLA Joint Code of Guidance on Funding External Bodies and Following the Public Pound',
 - Health and Safety,
 - Human Resources,
 - Equalities, and
 - any other policy required by the Council from time to time.

(This list is not exhaustive and will require to be kept up to date as governance requirements progress.)

The implementation of the policies will be illustrated by the company in the quarterly reports to the Company Monitoring Officer as indicated at 13 below and by the completion of an annual self assessment questionnaire on Corporate Governance as part of the process of preparing its Annual Report. The contents of the questionnaire will be prepared by the Council's Internal Audit Unit.

10. An undertaking that any subsidiary companies created by the Company will be subject to the terms of the parent company's Operating Agreement.
11. In certain shareholding companies the Council may hold 50% or less of the total shares. The Council will in future only enter into such ventures where other shareholders agree to adopt this Code of Guidance.
12. In existing companies where the Council's shareholding is 50% or less the Council will seek adoption of the Code of Conduct but recognises that full adoption may not be acceptable to the other shareholders and will in such cases adopt a code to be agreed with its partners.
13. An undertaking that written quarterly reports will be made to the Company Monitoring Officer with details of risk reporting and any other matter either dealt with in the Operating Agreement or considered relevant by the Company Monitoring Officer.

FUNDING AGREEMENT

Where a Funding Agreement is required the following basic requirements will be contained within the Funding Agreement:

1. A statement as to the purpose and objects of the company.
2. An agreed Business Plan.
3. An agreed procurement strategy ensuring best value.

Each company in receipt of funding is required to comply with the terms of the Council's process for the awarding of Third Party Grants. Such grants are approved annually by the Executive of the Council (usually in March) and are subject to the terms of a covering Letter of Award which will normally include details of the following:

- Terms of the Funding Agreement
- Requirements for acknowledgement of Council's funding
- Minimum Monitoring Standards
- Council Performance Indicators for Grant Management
- Extract from the Council's Financial Good practice Guide
- Details of the Role of Council Staff undertaking Company Monitoring duties

3. Memorandum and Articles

The Articles of Association of the Company will include a provision limiting the term of any Director appointed to the Company by the Council

(a) any person who is a Member of the Council to the life of the Council and

(b) any person who is a Council Officer to the time that person is in the employment of the Council.

In both cases it will be clear in the Articles of Association that either the Member or Officer can resign or be removed from the Board by the Council at any time.

In the event that it is no longer required by law for a company to have a Company Secretary the Company's Articles of Association, or their equivalent, will, be amended to stipulate that the Company will have a Company Secretary. The Company Secretary will be duly approved by the Council prior to their appointment.

4. Appointment of Chairman and Chief Executive

It is understood that the roles of Chairman and Chief Executive in securing good corporate governance are crucial. Accordingly where the Council is entitled to appoint or can influence the appointment of the Chair and/or Chief Executive the Council will give due consideration to the qualities that are required by the person fulfilling these roles.

The Council, if appointing Directors to the Board of the Company will consider the qualities which individuals would bring to the Board.

5. Training

Where the Council appoints a Director who is a Councillor or a Council Officer the Council will provide appropriate training to that person excepting where the person has previously received such training as the result of an earlier appointment. Directors who are not Councillor or Officers will be offered training from the Council. Otherwise adequate training must be provided to the non-Council Directors from an appropriately approved source unless evidence of earlier training or a note of relevant experience is provided.

6. Audit

The Council shall have the right to audit all appropriate records held by the Company concerning the operation of the Company and the Company shall ensure all records are available to the Council's nominated auditors and Company Monitoring Officer. The Company agrees to give the external auditors appointed by Audit Scotland the same rights as the Council's nominated auditors. Where the Council considers it appropriate the Company will ensure that the Company's auditors carry out additional due diligence and report the findings to the Council within fourteen working days of completion of the additional due diligence.

(B) HOW A COMPANY DEMONSTRATES GOOD CORPORATE GOVERNANCE

INTRODUCTION

The Council expects the Company to put in place structures to facilitate the efficient operation of the Company and that these structures are adhered to.

The Company's Board is to be effective and will lead and direct the Company as informed by *The Combined Code: Principles of Good Governance and Code of Best Practice*. (based on The Cadbury and Greenbury Reports).

All the Company's Directors have been trained in respect of their duties and obligations owed by them to the Company and that the Directors understand what is expected of them in order to fulfil these requirements.

1. The Company

The Company will have in place:

1. An Audit Committee

- To maintain a sound system of internal controls to safeguard shareholders' investments and the Company's assets

(unless in the view of the Company Monitoring Officer the company does not have a significant turnover, assets or staff complement to justify separate committee(s))

2. A Remuneration Committee

- To formulate a transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual Directors.
- To ensure no Director is involved in deciding his or her own remuneration.
- Where appropriate, to have a portion of Executive Directors' remuneration structured to link rewards to corporate and individual performance.

(unless in the view of the Company Monitoring Officer the company does not have a significant turnover, assets or staff complement to justify separate committee(s))

3. A Schedule of Notifiable Interests

- The Company will keep a Schedule of Notifiable Interests in the form as shown in Appendix 2a
- The Company will ensure that the Directors will update the Schedule with the relevant information without delay.
- The Company will ensure that the Company Monitoring Officer receives quarterly updates of the Schedule.

The Company will adhere to all policies required under the Operating Agreement or Funding Agreement.

The Company will adhere to all relevant disability legislation, any relevant legislation including European legislation.

The Company will ensure that all Health and Safety requirements are complied with and that this obligation has been accorded proper priority.

2. The Board

The Board will ensure that it, the Company Monitoring Officer, and when applicable, any other relevant Council Officer, are supplied with board papers five clear working days prior to the date of the Board meeting. The papers to be of a sufficient quality to enable the Board to discharge its duties properly.

The Board will make all efforts to ensure that inquorate meetings are avoided.

The Board will endeavour to ensure the management and operation of the Company to the agreed Business Plan and as far as reasonably possible the targets contained therein are met.

The Board will use sound judgement in business matters and have taken into account any relevant issues such as gearing and risk assessment.

Where there is a conflict of interest for a Director of the Company then in the case of a non pecuniary interest the Director is to declare the interest. Whether the Director can take part in the vote will be determined by the Company's Articles of Association.

In the case of a pecuniary interest the Director is to declare the interest and the Chair is to ensure that the Director takes no further part in the proceedings of the meeting relating to that matter or receive papers relating to that matter.

The Board will take responsibility for all personnel issues.

The Board will be responsible for ensuring all reports required by the Company Monitoring Officer under the Operating Agreement and/or the Funding Agreement will be delivered to the Company Monitoring Officer complete and on time.

If these reports are not satisfactory to the Company Monitoring Officer either in form and/or content the Board will be responsible for ensuring that the difficulty is resolved to the satisfaction of the Company Monitoring Officer and/or the Council without delay.

3. The Directors

The Directors will understand their role and their responsibilities and apply themselves accordingly.

The Directors will attend at least 75% of all Board meetings of the Company.

The Directors will appoint alternate Directors where appropriate to ensure consistent work streams and avoidance of inquorate Board meetings.

The Directors will ensure that the details and updates required to be entered into the Schedule of Notifiable Interests will be done so with out delay.

CONCLUSION

The Company will demonstrate the above by liaising with Company Monitoring Officer and if requested by the Company Monitoring Officer providing a Report on how the Company deals with these matters.

Checklist of Items to be sent to Company Monitoring Officer (with timeframes indicated)

1. Board Papers:

5 working days before Board Meeting the Agenda and Board papers to include.

- a) the management accounts for previous period (monthly or quarterly as normally reported)
- b) Updated Business Plan proposals (as they are developed)
- c) Risk Report
- d) Finance Officer's Report
- e) Schedule of Notifiable Interests update
- f) Policy implementation Report
- g) Any other matter requested by the Company Monitoring Officer

2. Accounts:

- | | |
|---|--|
| a) Management Accounts | Monthly or Quarterly (in line with board reporting frequency). |
| b) Draft Annual Accounts
(including an annual review of expenditure and performance) | 4 months after year end, or by 31 May, whichever is earlier. |
| c) Audited Annual Accounts | 6 months after year end, or by 31 August whichever is earlier. |

NB: Disclosures to:

- (i) Separately identify the Chairman, Chief Executive and members of the nomination, audit and remuneration committees (where applicable);
- (ii) Include a description of the work of these committees; and
- (iii) Include a statement of how the board operates, including which types of decisions are taken by the board and which are delegated to management.

3. Business Plan:

The earliest of 2 months prior to the start of the company's financial year or by the date stipulated in the operating/funding agreement.

Appendix 2a
SCHEDULE OF NOTIFIABLE INTERESTS

<i>Notifiable Interest</i>	<i>Description of interest</i>
Remunerated Positions and Non- remunerated Positions	A description of remunerated positions (but not the remuneration itself) by virtue of being - <ul style="list-style-type: none"> (i) employed or self-employed; (ii) the holder of an office; (iii) a director of an undertaking; (iv) a partner in a firm; and (v) involved in undertaking a trade, profession, vocation or any other work. A description of such interests as may be significant to, of relevance to, or bear upon, the work or operation of the Company, including without prejudice to that generality membership of or office in – <ul style="list-style-type: none"> (a) public bodies; (b) clubs, societies and organisations; (c) trade unions; and (d) voluntary organisations.
Contracts	Disclosure of interests (direct, indirect or proposed) in contracts with the Company at a meeting of the directors in accordance with Section 317 of the Companies Act 1985.
Houses, land and buildings	A description of any rights of ownership or other interests that may be significant to, of relevance to, or bear upon, the work or operation of the Company.
Shares and securities	Disclosure of interest in shares or debentures of the Company under Section 324 of the Companies Act 1985. Disclosure of interest in shares or securities in any company, undertaking or organisation that may be significant to, of relevance to, or bear upon, the work or operation of the Company of which (s)he is a Director.
3 rd party gifts / hospitality	Disclosure of 3 rd party gifts / hospitality in excess of £100 in value.