

Strategic Board Terms of Reference

Introduction

1. These Terms of Reference were adopted by the Constituent Councils on 28 September 2017 pursuant to the joint agreement between them dated 31 August 2017 ("the Joint Agreement").
2. The purpose of these Terms of Reference is to set out the purpose and objectives of the Strategic Board, the composition of its membership and how it shall conduct its business.
3. The Strategic Board is created to enable North East Museums ("NEM") to explore new ways of working and engage with a wider sector; and to ensure a sustainable, resilient and positive future for NEM, particularly in light of significant reduction in public sector funding.
4. The Strategic Board substitutes and carries out the functions of the Joint Committee established under ss101 and 102 Local Government Act 1972 acting with responsibility for the provision and maintenance of the NEM service. Members of the Strategic Board acknowledge and agree that, where the Strategic Board is discharging the statutory functions of the Constituent Councils and acting in its capacity as a Joint Committee, at law and pursuant to section 13 of Local Government and Housing Act 1989, only elected councillor members of the Strategic Board may vote in relation to such matters and be regarded as "voting members" of the Strategic Board for such decisions.
5. Notwithstanding this, the Strategic Board also recognises the benefit to NEM of fully engaging with its non elected Board members and the advantages of having such members take an active part in Board meetings, contributing to the richness of debate and having their views taken into account in relation to all decisions made.

Objectives and purpose

6. The Strategic Board's key objective is to administer, maintain and develop NEM ("the Objective"). More specifically, the Strategic Board is responsible for:

- a. developing a strategic focus to drive growth;
- b. providing scrutiny and leadership, democratic accountability, and enterprise support and challenge to NEM and its executive team;
- c. overseeing the overall governance and strategic leadership of NEM in accordance with NEM's mission and objectives;
- d. ensuring NEM's continuing financial viability and long term sustainability including by supporting NEM to take advantage of new opportunities (notably in relation to generating income from commercial and philanthropic sources);
- e. ensuring NEM is making effective use of its assets, services and resources to support its museum and archive activities;
- f. ensuring NEM is delivering against Constituent Council and University priorities; and
- g. ensuring NEM is recognising the diversity and meeting the needs of its users and communities.

Functions

7. In order to achieve the Objective, the Strategic Board shall carry out the following functions ("the Functions"):

- a. approve the Strategic / Corporate Plan for NEM;
- b. prepare a policy statement for NEM and revise it from time to time as may be required;
- c. monitor and review the work of NEM;
- d. determine the budget and staffing of NEM;

- e. comment on matters affecting museums, archives and records regionally, nationally and internationally insofar as they affect NEM;
- f. provide practical support and challenge to NEM's senior management team;
- g. ensure effective working relationships with NEM's key stakeholders / partners including TWAM Enterprises Limited t/a North East Museums Enterprises' Exhibitions by TWAM t/a Exhibitions by North East Museums and North East Museums Development Trust and with its funders, including Arts Council England;

and in carrying out those Functions, each member of the Strategic Board must observe and comply with the UK Corporate Governance Code and, in the case of the Elected Members, University Members, must observe and comply with any relevant Code of Conduct of the body which appoints them under these terms.

Powers

- 8. Subject to the provisions of the Joint Agreement, the Strategic Board shall have the powers delegated to it by the Constituent Councils to take such actions as are required to meet the Objectives and fulfil the Functions.
- 9. In making decisions pursuant to the exercise of its powers, the Strategic Board will have due regard to the capacity in which it makes such decisions and, when acting as a Joint Committee and discharging the statutory functions of the Constituent Councils, shall ensure that only elected councillor members of the Strategic Board vote on such matter. For the purposes of these Terms of Reference, decisions which amount to the discharge of a statutory function are known as "Reserved Matters" and those elected councillor members entitled to vote on such matters are known as "Reserved Matter Members".
- 10. The Strategic Board shall not incur expenses on behalf of NEM without the prior approval of the Elected Members.

Number of members

11. The Strategic Board shall be between ten and fifteen in number (excluding any Substitute Members, as defined in paragraph 21). Members of the Strategic Board shall take steps to procure that the Strategic Board is at its full complement in order for it to effectively discharge its Objectives.
12. If the number falls below the minimum, the Strategic Board shall take prompt steps to fill the relevant vacancy in accordance with these Terms of Reference.
13. Each of the Constituent Councils shall annually appoint two members (each member being an elected member of their Constituent Council) as a member of the Strategic Board (each called an “Elected Member”).
14. The University of Newcastle upon Tyne (“the University”) shall annually appoint one member as a member of the Strategic Board (the “University Member”).
15. There shall be up to four members appointed to the Strategic Board who are not members, employees or officers of the Constituent Councils or the University (the “Independent Members”) and such Independent Members shall be appointed in accordance with the nominations protocol appended to these Terms of Reference (“Nominations Protocol”).
16. The Elected Members shall always be in the majority. If the removal or resignation of a member results in the Independent Members and University Member forming the majority of members of the Strategic Board, the Constituent Councils shall take steps to elect a member or members to ensure that the Elected Members then form the majority and until such time, the remaining members may not take any further action under these Terms of Reference.
17. In appointing individuals as members (including the Substitute Members), regard must be had to the skills, knowledge, experience and diversity needed for the Strategic Board to successfully deliver its Objectives and fulfil its Functions. Upon appointment each member (including a Substitute Member) must promptly sign a declaration confirming that they are able and willing to act as a member and that in acting as member they shall at all times observe and comply with the UK Corporate Governance Code and any other relevant Code of Conduct.

Substitute Members

19. Each Constituent Council may from time to time appoint an elected member of their Constituent Council to attend and vote at meetings of the Strategic Board or relevant sub-committee(s) where an Elected Member is unable to attend such a meeting from time to time and gives reasonable prior notice of their absence to the Chair and Constituent Council. Each Constituent Council may remove the person appointed pursuant to this paragraph 19 (the "Constituent Council Substitute Member") at any time by giving written notice to the Strategic Board.
20. The University may from time to time appoint a person to attend, and vote on matters that are not Reserved Matters, at meetings of the Strategic Board or relevant sub-committee(s) where the University Member is unable to attend such a meeting from time to time and gives reasonable prior notice of their absence to the Chair and the University. The University may remove the person appointed pursuant to this paragraph 20 at any time by giving written notice to the Strategic Board.
21. For the purpose of these Terms of Reference, the persons appointed pursuant to paragraphs 19 and 20 are known as "Substitute Members".
22. A Substitute Member shall be entitled to:
 - a. receive notice of all meetings of the Strategic Board and relevant subcommittees at which the relevant Elected Member, Rotating Member or University Member is absent and has given prior notice of his/her absence in accordance with paragraph 19 or 20 (as applicable);
 - b. attend and (subject to paragraph 43) vote at the meetings described in paragraph 22a;
 - c. perform all the functions of the relevant Elected Member or University Member as a member at the meetings described in paragraph 22a.

Term of appointment of members

23. The annual appointment of each Elected Member shall be promptly confirmed in writing to the Strategic Board by the relevant Constituent Council by no later than 1 June each year.
24. The annual appointment of the University Member shall be promptly confirmed by the University in writing to the Strategic Board by no later than 1 June each year.
25. The appointment of each Substitute Member shall, promptly following the appointment, be confirmed in writing to the Strategic Board by the relevant Constituent Council or the University (as appropriate).
26. The appointment of the Chair (in his/her capacity as the chair of the Strategic Board meetings and not in his/her capacity as an Independent Member) shall be for a term of three years, subject to a maximum of two consecutive terms.
27. Independent Member shall serve in office for a term of an initial term of four years, and may be re-appointed at the end of their initial term for a further term of four years subject to a maximum of two consecutive terms.
28.

Notwithstanding

paragraphs 27, in exceptional circumstances and where the best interests of NEM require, the term of office of an Independent Member may be extended after s/he has served two consecutive terms in office but on a rolling one year basis and only with the agreement of all members (excluding the Independent Member concerned).
29. Any person who retires as a member by reason of them having served the maximum number of successive terms permitted under these Terms of Reference, or by giving notice pursuant to paragraph 35.a, is eligible for reappointment after four years has lapsed from the date of their retirement, and may be so re-appointed in accordance with the relevant procedures set out in these Terms of Reference.

Appointment of Independent Members

32. The Constituent Councils shall together determine the appointment of the Independent Members. A Constituent Council (for the time being, the Council of the City of Newcastle upon Tyne) (hereinafter the “Lead Authority”) shall coordinate this process in accordance with the procedure set out in the Nominations Protocol at Appendix 1.

Appointment of the Chair and Vice Chair

33. The Constituent Councils shall together determine the appointment of the Chair of the Strategic Board, who shall be an Independent Member. A Constituent Council (for the time being, the Council of the City of Newcastle upon Tyne) (hereinafter the “Lead Authority”) shall coordinate this process in accordance with the procedure set out in the Nominations Protocol at Appendix 1.
34. The Elected Members shall, on an annual basis, appoint two of their number to act as Vice Chairs of the Strategic Board.

Retirement and removal of members

35. The appointment of any member of the Strategic Board shall terminate forthwith in any of the following circumstances:
- a. s/he resigns therefrom by notice in writing to the Chair of the Strategic Board;
 - b. s/he is disqualified by statute from acting as a trustee by virtue of sections 178-180 of the Charities Act 2011 (as amended from time to time), for example, by reason of the member’s bankruptcy, fraudulent behaviour, or misconduct;
 - c. s/he is disqualified from acting as a director;
 - d. in the case of an Independent Member or the Chair, s/he is removed by the Lead Authority following consultation with and agreement of the Constituent Councils and after giving the Independent Member a reasonable opportunity to respond, on the basis that, in the Lead

Authority's reasonable opinion, that Independent Member's conduct or behaviour is detrimental to the interests of the Strategic Board and / or to NEM;

- e. s/he dies;
- f. s/he is absent from three consecutive meetings of the Strategic Board without good reason and the other members resolve to remove him/her.

In the event that the member concerned is an Elected Member or the University Member, the person which appointed him/her shall be invited to appoint someone in his/her place;

- g. in the case of an Elected Member, or the University Member, s/he is removed by the body who appointed him/her, in which case that body shall appoint someone in his/her place; and / or
- h. in the case of a Substitute Member, s/he is removed by the body which appointed him/her, in which case that body may appoint another Substitute Member in accordance with these Terms of Reference;
- i. s/he breaches the terms of these Terms of Reference or the Joint Agreement.

36. Each Elected Member shall cease to be a member of the Strategic Board if:

- a. s/he ceases to be a member of the Constituent Council appointing him/her; or
- b. the Constituent Council by which s/he was appointed terminates his/her appointment.

37. Subject to paragraph 17, should any vacancy arise amongst the Elected Members, the relevant Constituent Council shall appoint a member to fill the relevant vacancy and in the intervening period before such appointment is made the remaining members shall nonetheless constitute the Strategic Board and shall have full power to conduct the business of the Strategic Board.

Delegation by Strategic Board

38. The Strategic Board may delegate any of their powers or functions other than those relating to non-urgent Reserved Matters (defined below) to a subcommittee or sub-committees, and if they do, they shall determine the terms and conditions on which the delegation is made. The Strategic Board may at any time alter those terms and conditions, or revoke the delegation.
39. The Strategic Board's power of delegation is subject to the following requirements:
- a. subject to paragraphs 39b and 39c, a sub-committee may consist of three or more persons (which may include non members);
 - b. where a sub-committee has delegated authority to make decisions on behalf of the Strategic Board, the majority of its members must be members of the Strategic Board;
 - c. where a sub-committee has delegated authority to make decisions on urgent Reserved Matters, only those members of the sub-committee who are Reserved Matter Members (defined below) may vote on the decisions;
 - d. the acts and proceedings of any sub-committee must be brought to the attention of the Strategic Board as soon as is reasonably practicable;
 - e. the Strategic Board shall from time to time review the arrangements which they have made for the delegation of their powers.

Reserved Matters

40. The Strategic Board recognises that certain decisions relating to the discharge of a statutory function are, at law, reserved to members who are Elected Members, or Constituent Council Substitute Members, being elected councillors of a Constituent Council (together the "Reserved Matter Members") being those decisions relating to NEM of such significance to be considered by the Constituent Councils as being ones which are required for the discharge of the Constituent Council's statutory obligations ("Reserved Matters").

41. Except for the Reserved Matters listed in Appendix 2, the Constituent Councils agree that all day to day decisions relating to the business of NEM which are made in accordance with the Strategic Board's business plan from time to time approved (the "Business Plan") shall be made by the Strategic Board acting collectively.
42. The matters identified in Appendix 2 as being within the scope of the Strategic Board's authority may only be carried out with the agreement of the Reserved Matter Members unless such matters are set out in the Business Plan for the period in question which has been approved by the Reserved Matter Members, in which case, the Reserved Matter Members shall be deemed to have consented to such matter.
43. In relation to decisions made in relation to Reserved Matters, whilst the Independent and University Members may contribute fully in the debate leading up to such decision, all members recognise that, at law, only Reserved Matter Members can exercise a vote on such decision and be regarded as voting members of the Strategic Board.
44. In the event of dispute or doubt as to whether or not a decision amounts to a Reserved Matter, the question shall be directed to the heads of legal services at the Constituent Councils who shall, acting together, make a determination, recognising the need to make such determination promptly in order not to stifle the business of NEM and the activity of the Strategic Board.

Meetings and proceedings

45. The Strategic Board shall meet at least four times a year and at such other times as it considers necessary to achieve its Objectives and fulfil its Functions.
46. The Chair may call a meeting of the Strategic Board at any time and shall do so upon written requisition of two members. The Secretary shall send (by post, e-mail or personally) to every member at least seven days before a meeting of the Strategic Board a notice confirming the date, time and location of the meeting specifying the business proposed to be transacted thereat.

47. Whilst Independent Members may join the meeting via video conference or conference telephone or similar means to allow every independent member to take part in the meeting, when the Strategic Board is dealing with Reserved Matters and therefore acting as a joint committee, the Elected Members are required to attend in person under schedule 12 of the Local Government Act 1972.
48. In the absence or unwillingness of the Chair, one of the Vice Chairs shall chair meetings of the Strategic Board. If both Vice Chairs are able and willing to chair the meetings, they shall agree between themselves which one of them shall act as chair and, in the absence of agreement, shall determine which one of them shall chair by drawing lots. In the absence or unwillingness of the Chair and the Vice Chairs, the members of the Strategic Board may elect a chair for the meeting from amongst its members present.
49. Save in relation to the Reserved Matters, and subject to paragraph 56, and unless otherwise stated herein, every matter arising at a meeting of the Strategic Board or a sub-committee thereof shall be decided by a majority of the votes of the members present and voting on the question and in the case of an equality of votes the chair of the meeting shall have an additional and casting vote.
50. No matter which is a Reserved Matter shall be voted on unless the Reserved Matter Members present at the meeting vote in favour of the same.
51. Any five members of the Strategic Board shall form a quorum provided that a minimum of three Elected Members are present at a meeting. A Substitute Member shall, if the relevant Elected Member or University Member is not present, be counted in the quorum.
52. The Strategic Board may permit other persons to attend and speak at their meetings save that such persons shall not be entitled to vote.
53. Any five members of the Strategic Board shall form a quorum provided that a minimum of three Elected Members are present at a meeting. A Substitute Member shall, if the relevant Elected Member or University Member is not present, be counted in the quorum.

54. Decisions of the members may be made either:
- a. By resolution at a meeting; or
 - b. By resolution in writing in accordance with paragraph 55.
55. A resolution in writing signed by the members entitled to receive notice of a meeting of the Strategic Board shall be as valid as if it had been passed at a meeting of the Strategic Board duly convened (even if it consists of several documents in the like form each signed by one or more members), provided that:
- c. the resolution is passed by the requisite number of members as would have been required to pass it at a meeting;
 - d. a copy of the proposed resolution has been sent to all the members eligible to vote;
 - e. the document signifying a member's agreement is authenticated by their signature, by a statement of their identity accompanying the document, and received at the principal office within 28 days beginning with the circulation date;
 - f. where a resolution is signed by a Substitute Member it need not also be signed by his/her appointing body's Elected Member or University Member (as applicable).

Conflicts of interest

56. A member (including a Substitute Member) who has a conflict of interest in relation to business transacted at a meeting of the Strategic Board or of a sub-committee thereof ("Business") must:
- a. at the outset of the meeting declare the nature and extent of his/her interest (either direct or indirect) before discussion on the Business;
 - b. withdraw from the meeting for discussion of the Business unless expressly invited to remain in order to provide information;

- c. not be counted in the quorum for the part of the meeting during which the Business is discussed; and
- d. withdraw during the vote on the Business and have no vote on the matter.

The minutes of the meeting shall confirm the actions taken to manage the conflict of interest in this regard.

- 57. An Elected Member, the University Member, or a Substitute Member who is also a member, officer or employee of a Constituent Council or the University as the case may be, shall not be regarded as conflicted by virtue only of the fact that s/he is a member, officer or employee of a Constituent Council or of the University (as applicable).

Reporting requirements

- 58. The Strategic Board shall keep minutes of its meetings and a copy of those minutes, once approved by the Strategic Board, shall on request be made available to the Constituent Councils, including by publishing on NEM's website.
- 59. The minutes of each meeting of the Strategic Board shall clarify which decisions were made in relation to Reserved Matters and confirm that only Reserved Matter Members voted in relation to the same.
- 60. The Constituent Councils may, from time to time at their discretion seek any further information from the Strategic Board in relation to the performance of its Objectives and discharge of its Functions.
- 61. The Strategic Board shall, if requested, produce and present to the Constituent Councils a written report outlining the Strategic Board's work and activities over the preceding period.

Variation or termination

- 62. These terms of reference shall remain in force until varied or revoked by the members.

Appendix 1

Appointment of Independent Members and the Chair – Nominations Protocol

1. To ensure the continuing and effective functioning of the Strategic Board, the relevant processes set out in this Appendix shall be followed to appoint the Independent Members and the Chair.
2. The Lead Authority shall coordinate the appointment of Independent Members, and the Chair by the Constituent Councils by:
 - a. where the Lead Authority considers appropriate, advertising any vacancy for an Independent Member or the Chair within one month of that vacancy arising or within one month of the Lead Authority becoming aware of the vacancy being likely to arise;
 - b. inviting applications to be submitted to the Lead Authority within a reasonable period from the date that the vacancy is advertised pursuant to paragraph 2a (if it is advertised) or otherwise, within two months of the date on which the vacancy arose (the “Closing Date”);
 - c. together with the Constituent Councils, considering applications from potential candidates and deciding which candidates to interview;
 - d. making arrangements for the Constituent Councils to form a panel to interview applicants within one month of the Closing Date;
 - e. liaising with each of the Constituent Councils following such interviews, and reaching agreement on the person(s) (if any) that they wish to appoint

to fill the position. If the Constituent Councils cannot reach agreement by consensus on any one or more candidates, they will repeat the above process until agreement is reached;

- f. once agreement is reached, the Lead Authority shall notify the successful candidate(s) of their appointment as an Independent Member (and in the case of the Chair, his/her appointment as Chair);
- g. notifying unsuccessful candidates that they have not been appointed to the Strategic Board.

In recommending, and either accepting or rejecting, an individual for appointment as an Independent Member, the Lead Authority and the Constituent Councils must have regard to (i) the skills, knowledge, experience and diversity needed for the Strategic Board to successfully deliver its Objectives and fulfil its Functions; and (ii) the Strategic Board's and NEM's commitment to equal opportunities and the avoidance of discrimination.

The Chair will, once appointed in accordance with this Nominations Protocol, sit on the panel together with the Constituent Councils to interview candidates for Independent Members.

- 3. At least three months prior to expiry of an Independent Member's term of office or the Chair's term of office (as applicable), the Lead Authority must approach that Independent Member or the Chair and ask them to confirm in writing, and within 28 days of the approach, whether they are likely to stand again for a further successive term (if so permitted to stand again by these Terms of Reference).
 - a. If the Independent Member or the Chair (a) fails to confirm whether they will stand again; or (b) confirms that they will not stand again; or (c) is not permitted by the Terms of Reference to stand for a successive term, the process set out in paragraph 2 must immediately be followed.
 - b. If the Independent Member or the Chair confirms that they will stand again for a successive term, and that Independent Member or the Chair is

permitted to so stand again under these Terms of Reference, then in good time prior to expiry of the Independent Member's or the Chair's current term:

- i. the Lead Authority shall write to each Constituent Council to (a) inform them that the Independent Member or the Chair intends to stand again for a successive term and is permitted to do so under these Terms of Reference; and (b) give each Constituent Council 14 days to confirm whether they agree to the re-appointment of that Independent Member or that Chair. If a member fails to respond within 14 days they will be deemed to agree to the re-appointment.
 1. If no objections are received to the re-appointment, the Lead Authority shall write to the relevant Independent Member or the Chair (with copy to all members) to confirm their reappointment, such appointment to be effective immediately upon expiry of their current term.
 2. If at least one objection is received, and the Lead Authority, acting reasonably, agrees with the rationale provided for the objection(s) the process set out in paragraph 2 of this Appendix must promptly be followed.
4. Subject to paragraph 2 of this Appendix, as soon as (a) the Lead Authority becomes aware that a vacancy for an Independent Member or the Chair has arisen; or (b) the Lead Authority becomes aware that a vacancy for an Independent Member or the Chair is likely to arise, whichever is earlier, the process set out in paragraph 2 of this Appendix must be followed. For the avoidance of doubt, if any member becomes aware that a vacancy for an Independent Member or a Chair has arisen or is likely to arise then they must, as soon as reasonably practicable, inform the Lead Authority.

Appendix 2

Reserved Matters

The following matters shall be deemed “Reserved Matters” for the purpose of the Terms of Reference:

1. Financial

- 1.1. Adoption of the annual budget and any variation to the same.
- 1.2. Expenditure in any one year on capital account of over limits from time to time under the UK Procurement Policy Note 11/23 – New Thresholds (or equivalent / successor) in one transaction or series of transactions where those transactions are required by regulation 6 of the Public Contracts Regulations 2015 (or any successor legislation) to be aggregated for the purpose of calculating whether the relevant threshold is exceeded unless provided for in the relevant Business Plan.
- 1.3. Approval of appointment of new auditors.
- 1.4. Related party dealings with any members of the Strategic Board or connected persons.
- 1.5. Appointment of new bankers and change of authorised signatories to the bank accounts.
- 1.6. Change in accounting or taxation policies of NEM.
- 1.7. Appointing any consultant, agent or other intermediary to conduct any aspect of the business other than any such appointment in the normal course of business and at a cost of more than the limits under the UK

Procurement Policy Note 11/23 – New Thresholds (or equivalent / successor) from time to time.

- 1.8. NEM extending its activities outside the scope of the Business Plan, or closing down any business operation.
 - 1.9. Approval or signing of the annual accounts.
 - 1.10. Approval of the sublicensing of NEM's name or logo.
 - 1.11. Disposal of items in the NEM collections.
2. Management, directors and employees
- 2.1. Engagement by NEM of new employees with remuneration in excess of, or dismissal of employees with remuneration in excess of £75,000 per annum.
 - 2.2. Proposed appointment or removal of any Strategic Board member and appointment of any sub-committee member.
 - 2.3. Devolution or transfer of management control of NEM to persons outside the agreed Strategic Board.
 - 2.4. Payment of any fees, remuneration or other emoluments to Strategic Board Members or varying any such fees, remuneration or emoluments.
3. Share / loan capital and constitutional matters
- 3.1. Creation, acquisition or disposal of any subsidiary (or shares in a subsidiary) of
NEM.
 - 3.2. Capitalisation of profits or reserves of NEM – e.g. proposal to convert income into a capital fund.
 - 3.3. Change of name of NEM.
 - 3.4. Change in the status of NEM from a joint local authority service.
 - 3.5. Entry into any reconstruction, consolidation or amalgamation with any company, association, partnership or legal entity or the acquisition of any business or undertaking of any other person e.g. proposing to merge with another company.