Governance Framework for Controlled Entities

Section 1 - Introduction

(1) Section 16A of the University of Newcastle Act 1989 (NSW) (the Act) requires the Council to ensure that a controlled entity does not exercise any function or engage in any activity that is not authorised by or under the Act.

(2) This framework establishes the governance requirements for the University of Newcastle's (University) controlled entities by setting out how the University manages its relationship with controlled entities subsequent to approval, with a view to maximising their effectiveness and promoting good governance and sound risk management.

(3) This framework establishes the governance requirements for controlled entities to ensure that:

a. the Council can meet its obligations under the Act; and
b. controlled entities:
    i. exercise functions in the manner required by the Council;
    ii. engage in activities that are authorised by the Council; and
    iii. act at all times in accordance with relevant legislation.

(4) This document should be read in conjunction with the Commercial Activities Policy and the Commercial Activities Procedure.

(5) A number of other Acts and policies also impact on the activities of the Council and controlled entities. These acts and policies include, but are not limited to, those listed in Controlled Entities - Applicable Governance Documents.

Section 2 - Audience

(6) The expected audience of this document is:

a. The Council;
b. University of Newcastle staff;
c. University controlled entities.

Section 3 - Controlled Entity Status

(7) The University, regardless of the nature of its involvement with an entity, shall determine whether it is a parent entity by assessing whether it controls the entity.

(8) In defining control, the University relies on the guidance provided by the Government Sector Finance Act 2018 where control is determined in accordance with:

a. Section 50AA of the Corporations Act 2001 (Cth) where the University controls an entity if the University has the

capacity to determine the outcome of decisions about the other entity's financial and operating policies; or

b. Australian Accounting Standards AASB 10 Consolidated Financial Statements where the University is deemed to control an entity if the University has all of the following:
    i. power over the entity;
    ii. exposure, or rights to, variable returns from its involvement with the entity; and
    iii. the ability to use its power over the entity to affect the amount of the University's returns.

(9) University controlled entities fall within the definition of a commercial activity under the University's Commercial Activities Policy and must be approved in accordance with the Commercial Activities Procedure prior to their establishment.

Section 4 - Establishment of a Controlled Entity

(10) The Council is responsible for establishing and authorising the participation by the University in controlled entities, including monitoring and oversight of the functions and activities of the controlled entities.

(11) The Council's approval is also required for the following matters concerning a controlled entity:

a. the scope of the functions and it's commercial activities;
b. Directors to be appointed, removed or replaced;
c. governance principles, including any significant amendments;
d. the induction and director training program for Directors;
e. the corporate or business strategy or plan, including any changes to previously approved plans;
f. the annual budget;
g. the measurable performance targets;
h. the control and accountability systems;
i. the annual statutory financial reports to the Auditor General or other relevant regulatory body (as appropriate); and
j. the publication of the annual report (if required).

(12) Where the Council is required to nominate persons for appointment to a Board, the Council will seek the recommendation of the Nominations and Governance Committee, including the appropriate skills and experience required for the particular Board positions.

Constitution

(13) Each controlled entity must have a Constitution that states the objects and functions of the controlled entity. The Constitution must be adopted either upon incorporation or within 6 months of approval of commercial activity proposal.

(14) In establishing a controlled entity, the Council will ensure that the Constitution requires that the University maintains control of the controlled entity and that, so far as is reasonably practicable and possible, that at least some Directors are External Members.

(15) The Constitution must include the following:

a. the objects and purpose of the controlled entity, which establishes a connection with the University and describes the benefit the controlled entity provides to the University;
b. the means by which the University controls the controlled entity's decision-making, directly or indirectly,

through one or more of the following:

i. the composition of the controlled entity's Board;
ii. the majority of votes which may be cast at a general meeting;
iii. holding the majority of the share capital (for a company which has share capital); or
iv. governing the financial and operating policies under statute or agreement; and

c. if the controlled entity is a wholly owned subsidiary of the University (as defined under the Corporations Act), include a provision which expressly authorises a Director to act in the best interests of the University (as permitted by section 187 of the Corporations Act). The Council must approve any amendments to the controlled entity's Constitution before those amendments can take effect.

Charter

(16) Each controlled entity must have a Charter that operationalises the controlled entity's Constitution.

(17) The Charter will outline the following:

a. the controlled entity's governance principles;
b. the Board of the controlled entity's function and composition;
c. roles and responsibilities of members of the controlled entity's Board;
d. standards of behaviour expected of the controlled entity's Board members;
e. Board processes;
f. mechanisms for measuring Board effectiveness.

Section 5 - Management of a Controlled Entity

Council

(18) The Council will ensure that a controlled entity does not exercise any function or engage in any activity that the University itself is not authorised by the Act to undertake, and as far as is reasonably practicable:

a. that the governing bodies of controlled entities:
    i. possess expertise, skills and experience necessary to provide proper stewardship and control, and comprise, where possible, at least some External Members; and
    ii. adopt and evaluate their own governance principles; and
    iii. document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets; and
b. that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

(19) The Council, through the Risk Committee, is responsible for overseeing risk management and risk assessment across the University and its controlled entities.

Controlled Entity Board Duties

(20) The Board must ensure that the controlled entity exercises those functions and activities as approved by the University in accordance with the Act, its Constitution, Charter, and any other relevant law.

(21) The Board of the controlled entity is responsible for the good governance and stewardship of the controlled entity, driving performance and compliance through the adoption and evaluation of its own governance principles in accordance with its Constitution and Charter, the Act and other applicable legislation.

(22) The Board of a controlled entity must ensure that:

a. it does not take any action, or omit to take any action, that adversely affects the University's ability to comply with its obligations as a public authority;
b. it complies with legislation relevant to the controlled entity in the State or country it operates in;
c. risk management, compliance and accountability processes are in place and are consistent with current legislation, University policy, and the controlled entity's policies; and
d. the controlled entity's management conforms to relevant legislation, University and controlled entity and relevant University policies and guidelines.

(23) The Board is responsible for:

a. providing the Council with a statement of the controlled entity's governance principles;
b. complying with the Council reporting requirements as set out in the Controlled Entities - Annual Reporting Calendar 2024;
c. establishing, in conjunction with the Council, a Directors induction and governance training program for Directors;
d. ensuring that it does not use the University name, logo and brand unless such use is approved in writing by the University and is in accordance with relevant University consents and policies;
e. ensuring adequate control and accountability systems and reporting are in place including frameworks for delegations, risk management and legal and regulatory compliance, and providing assurance of the adequacy of these;
f. ensuring systems, policies, procedures and practices are in place to adequately assess and manage the risks to the controlled entity and the University, to the extent applicable, in all business and commercial activities;
g. providing the Council with the corporate or business strategy or plan and annual budget;
h. monitoring performance against the annual budget and business plan;
i. providing oversight of internal and external audit plans, including monitoring of matters arising from the audits;
j. ensuring policies and procedures are in place to govern Director disclosures of interest and management of conflicts of interest;
k. ensuring the controlled entity's insurances, whether through University insurance policies or the controlled entity's own insurance policy, provide coverage at a level acceptable to the University.

Board Approval

(24) Board approval is required for the controlled entity's:

a. entry into agreements, including with the University, within delegated authority limits; and
b. policies and procedures for the controlled entity, consistent with the objects and functions of the University, as stipulated in the Act, and the controlled entity.

Section 6 - Controlled Entity Reporting

Reporting Structure

Council
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Council Committee

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Vice-Chancellor
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Executive Leadership Team
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Nominated Executive
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Controlled Entity Board

Reporting

(25) Each controlled entity Board must report to the Council, through the Nominated Executive, Vice-Chancellor, Executive Leadership Team and the relevant Council Committee, on the following matters:

a. Board membership and composition;
b. immediate notification of any representation (non-routine correspondence) to or from a government or statutory authority;
c. annual corporate, strategy or business plans which include achievable and measurable performance targets;
d. annual budget;
e. annual audited statutory financial statements;
f. annual reports on audit and risk;
g. an annual assurance statement;
h. quarterly finance and performance reports against the business plans and including reporting on safety, risk, insurance, audit, operations and finance;
i. review of Board performance every two years;
j. annual report on commercial activities of the controlled entity; and
k. review of the entity as a commercial activity every 3 years from the date of entity registration.

(26) Each Board is responsible for ensuring that the controlled entity complies with Council's reporting requirements, which are set out in the Controlled Entities - Annual Reporting Calendar 2024.

(27) Each controlled entity is required to provide regular reports, in a form approved by Council, to the appropriate Nominated Executive.

(28) The Council and the Finance and Infrastructure Committee or Risk Committee may obtain independent audit reports on controlled entities.

(29) The Chief Financial Officer may require internal audits to be performed on controlled entities. Internal audit reports will be reported through to the relevant Council committee.

Vice-Chancellor

(30) The Nominated Executive must immediately advise the Vice-Chancellor, through the General Counsel, of any threatened or potential legal action involving the controlled entity.

(31) Each Board must immediately also advise the Vice-Chancellor of any possible or actual extreme risk as identified by the Risk Management Framework.

Executive Leadership Team

(32) The Board of each controlled entity is to report to the Executive Leadership Team, through the nominated executive, on matters described under Clause 23f above, and the following matters:

a. possible or actual extreme risk, possible or actual insurance claims, significant changes to entity performance, significant business changes, as they may arise; and
b. monthly exception reports where significant financial or performance risk is identified, or where there is a significant change in the risk profile of any business area.

Nominated Executives

(33) Subject to each Director's duties to the controlled entity under the Corporations Act 2001 (Cth) and the law, the Board of each controlled entity reports to a Nominated Executive.

(34) The Nominated Executive is responsible for receiving a Commercial Activity Report at least once every 3 years.

(35) The Nominated Executive is then responsible for reporting that information through to the Executive Leadership Team or Vice-Chancellor. The Nominated Executive will manage obligations and any potential conflicts of interest in the performance of their duties.

(36) A summary of Nominated Executives is provided in Controlled Entities - Nominated Executives.

University Secretary

(37) Each controlled entity is to provide information to the University Secretary for recording in the Commercial Activities Register, as outlined in the Commercial Activities Policy.

Section 7 - Exit and Wind Up

(38) In accordance with the Commercial Activities Policy, a Commercial Activity Exit Form must be prepared and submitted where there is a legitimate reason to exit or de-register a controlled entity.

(39) A controlled entity may only be wound up and its assets distributed in accordance with the provisions contained in the controlled entity's Constitution and the relevant legislation, which will vary according to the country of domicile of the controlled entity.

Section 8 - Definitions

(40) In the context of this document, the following definitions apply:

Term	Definition
Commercial Activity	As defined by Section 21A of the University of Newcastle Act a University commercial activity means: i. any activity engaged in, by, or on behalf of the University in the exercise of commercial functions of the University; and ii. any other activity comprising the promotion of, establishment of, or participation in, any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Policy to be a University commercial activity.
AASB	The Australian Accounting Standards Board.
Board	The governing body of a controlled entity.
Constitution	The set of fundamental rules which govern how an entity operates including the rights and obligations of its members.

Term	Definition
External Member	In relation to a Board member of a controlled entity means not a staff member or student of the University, nor a member of the Council.
Nominated Executive	The member of the Executive Leadership Team who is responsible for providing reports from the Board of the controlled entity to the Executive Leadership Team and Council.

Section 9 - Appendices

(41) Controlled Entities – Applicable Governance Documents

(42) Controlled Entities - Annual Reporting Calendar 2024.

Status and Details

Status	Historic
Effective Date	6th March 2025
Review Date	6th March 2028
Approval Authority	University Council
Approval Date	28th February 2025
Expiry Date	12th October 2025
Responsible Executive	Hamish Lithgow University Secretary
Enquiries Contact	Hamish Lithgow University Secretary Legal and Governance Services

Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Risk management" - The co-ordinated activities of assessing, controlling, monitoring, and reviewing risk in the pursuit of the University's objectives.

"Risk assessment" - The overall process of risk identification, risk analysis, and risk evaluation.

"Asset" - Any tangible or intangible item (or group of items) that the University owns or has a legal or other right to control and exploit to obtain financial or other economic benefits.

"Controlled entity" - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

"Student" - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.