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**Nottingham
City Council**

Additional / To Follow Agenda Items

This is a supplement to the original agenda and includes reports that are additional to the original agenda or which were marked 'to follow'.

Nottingham City Council City Council (Extraordinary)

Date: Monday, 18 December 2023

Time: 6.00pm

Place: Council Chamber, Council House

Governance Officer: Jane Garrard, Senior Governance Officer **Direct Dial:** 0115 8764315

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City Council - 18 December 2023

Report of Melbourne Barrett, Chief Executive

Report Author and Contact Details:

James Rhodes, Acting Director of Policy, Performance and Communications and Assistant Chief Executive

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Title: Response to Section 114 Report – Financial Recovery Plan

Does the report form part of the Budget or Policy Framework?

Yes No

Does this report contain any information that is exempt from publication?

No

Relevant Council Plan Key Outcome:

Green, Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Living Well in our Communities	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>

1. Summary

- 1.1 On 29 November 2023, the Section 151 Officer issued a report under Section 114 (3) of the Local Government Finance Act 1988, formally notifying the Council that in his opinion the Council is unable to meet its statutory requirement to deliver a balanced budget in 2023/24. The Council is required to hold a meeting within 21 days to determine whether it agrees or disagrees with the views contained in the report and what action, if any, it proposes to take in consequence of it.
- 1.2 The purpose of this report is to provide an effective response to the Section 114 (3) report, which it recommends is accepted. The response is framed as a Financial Recovery Plan and incorporates a number of measures as set out in this report.
- 1.3 Following consideration of this report and decisions made by Council, the Section 151 Officer will undertake a further assessment of the Council's ability to meet its statutory requirement to balance its budget in 2023/24.
- 1.4 Difficult decisions are required to be made and the council will leave no stone unturned to achieve financial sustainability, to provide a stable platform to support the city and its people, in accordance with its statutory Best Value duty.

2. Recommendations

That Full Council:

- 2.1 Agrees to accept the section 114 (3) report issued by the Section 151 Officer on 29 November 2023, which is attached at Appendix 1.
- 2.2 Agrees that the Council take immediate steps to mitigate the forecast 2023/24 overspend through the implementation of the Financial Recovery Plan, as set out in paragraphs 6.5 to 6.12 below, including:
 - The continuation of the Spend Control Policy introduced by the Section 151 Officer to remain in place until the 31 March 2025, subject to review after the 2023/24 budget outturn, and after Period 2 and Period 6 budget monitoring in 2024/25. The practical arrangements of operating the Spend Control Policy over an extended period will be kept under review by the Section 151 Officer, in consultation with the Head of Paid Service and Monitoring Officer
 - The continuation of actions under the existing Financial Improvement Plan, monitored by the Improvement and Assurance Board, in relation to systems improvement, improved forecasting and income maximisation.
 - The review of the capital programme will be carried out as set out in paragraph 6.9.
- 2.3 Endorses the Section 151 Officer's intention to seek to secure Exceptional Financial Support from the Department for Levelling Up, Housing and Communities (DLUHC) for 2023/24
- 2.4 Notes that the setting of a balanced budget for 2024/25 and Medium-Term Financial Plan for 2024/25 to 2027/28, in the context that very significant savings will be required, forms a key part of the Financial Improvement Plan.

3. Reasons for recommendations

- 3.1 In line with their statutory responsibilities the Section 151 Officer issued a section 114 (3) report (Appendix 1) because the expenditure of the authority incurred (including expenditure it proposes to incur) in the 2023/24 financial year is likely to exceed resources available to it to meet that expenditure. Adopting the measures incorporated in the Financial Recovery Plan are intended to reduce the risk of the Section 151 Officer considering the necessity for a further Section 114 (3) report in 2023/24.
- 3.2 The environment the Council is operating in continues to present significant financial challenges both in the current year of 2023/24 and through into 2024/25. It will be essential for the Corporate Leadership Team to continue to exercise firm financial management throughout this year and for the forthcoming year through the close monitoring of budgets and, in particular, the Financial Recovery Plan, alongside previously approved savings. The Spend Control Policy will most likely need to continue to be in place for the foreseeable future.

4. Other options considered in making recommendations

- 4.1 The alternative to the acceptance of the section 151 Officer's report and approval of a measures set out in the Financial Recovery Plan set out in this report, would require the Section 151 Officer to undertake a further assessment in relation to the Council

meeting its statutory duty to achieve a balanced budget, which could include the issuing a further Section 114 (3) report.

- 4.2 It should also be noted that in addition to briefing the Executive, the Section 151 Officer engaged with the Improvement and Assurance Board, the External Auditor and the Department for Levelling Up Housing and Communities as relevant external stakeholders in advance of issuing the Section 114 (3) report. In addition to any further action that the Section 151 Officer may consider in the event of the recommendations in this report not being supported, the option would be open to these stakeholders to take further action.

5 Consideration of Risk

- 5.1 The Financial Improvement Plan is an immediate response to the risks outlined in the Section 114 (3) Report.

6 Background

Report issued under Section 114 (3)

- 6.1 The current context for upper tier and unitary local authorities with social care responsibilities, like Nottingham City Council, is very stark. Councils are facing the most challenging financial environment that anyone can recall, and across the country there has been significantly increased demand for adults and children's social care. In addition, cities are receiving significantly increased homelessness presentations. On top of this, whilst all organisations are managing the effects of significant cost and pay inflation, this was not provided for in our previous finance settlement from government.
- 6.2 Although not the cause of the overspend in the current year, the situation in Nottingham is further compounded by the council's reduced financial resilience because we have had to use significant financial reserves to cover the historic losses from the failure of the council's arm's length company Robin Hood Energy which ceased trading in 2020. The council has also needed to make good Housing Revenue Account funds historically unlawfully used to support the council's General Fund for several years from 2014/15 until 2019/2020. This means that we have less reserves available to mitigate the current financial pressures experienced compared to others.
- 6.3 In March, the council had set a balanced budget and medium-term financial plan. However, the increased service pressures since then have led to a significant projected overspend, despite a number of management and corrective actions put in place as part of the council's Financial Intervention Strategy. This has included reducing non-essential spending, non-pay spending and managing staff vacancies, which have reduced the projected overspend as at the end of Period 6 from £57 million to £23 million, nevertheless a substantial projected overspend remains.
- 6.4 On 29 November 2023, the Section 151 Officer issued a report to all members under section 114 (3) of the Local Government Finance Act 1988. This report is attached at Appendix 1 and the Council is required to confirm whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.

Financial Recovery Plan

- 6.5 This Financial Recovery Plan provides the required response to the Section 114 (3) report, and its purpose is to reduce the council's underlying level of revenue

expenditure on an ongoing basis to achieve financial sustainability. This will include strict spending controls overseen by the Section 151 Officer, the requesting of exceptional financial support from government, setting a balanced budget for 2024/25 and Medium Term Financial Plan for 2024/25 to 2027/28, together with a revised policy framework reduced in scope to match the resources available, together with a continuation of the measures already underway as part of the Financial Improvement Strategy already in place.

Spending Controls

6.6 In response to Instructions received from the Improvement and Assurance Board, the council had introduced spending controls as part of the Financial Improvement Plan (FIP). Whilst this has mitigated some financial pressures it has not proved sufficient and strengthened arrangements through the Spending Control Policy have been introduced as part of the Section 114 (3) report. The Spend Control Policy introduced by the Section 151 Officer on 29 November 2023 has had a material impact in reducing the rate of spend during the Prohibition Period of the Section 114 (3) report. The Spend Control Policy incorporated the provisions of Section 115 of the Act which states that the Section 151 Officer may only approve spending that (i) prevents the situation that led to the issuance of the Section 114 (3) report worsening, (ii) improves the situation and (iii) prevents it from recurring. The Spend Control Policy also provides that 'Allowable spending' will be approved where the Section 151 Officer is satisfied that spending is either:

- Essential to meet the Council's legal duties at the minimum level, or to meet existing legal commitments
- Externally funded spending, where the Council would lose external funding if approval were not given, and
- Spend where there is a robust business case will be considered by the Spend Control Board chaired by the Section 151 Officer

6.7 It should be expected that the Spend Control Policy will reduce the level of spending in 2023/24 and in so doing contribute to reducing financial pressures that would otherwise impact upon 2024/25. Given the seriousness of the position it is proposed that the Spending Controls continue in force until 31 March 2025, subject to reviews to be carried out by the Section 151 Officer at the end of the Period 2 and Period 6 budget monitoring periods in 2024/25. The practical arrangements of operating the Spend Control Policy over an extended period will be kept under review by the Section 151 Officer, in consultation with the Head of Paid Service and Monitoring Officer.

6.8 In addition, other measures incorporated within the council's Financial Improvement Plan (FIP) including the maximisation of transformation savings and improving collection rates etc. will continue. The FIP is structured around the following eight themes:

- 1) Strengthening financial leadership.
- 2) Improving the approach to managing and governing the capital programme.
- 3) Enhancing financial systems to meet user needs.
- 4) A well designed and robust system of internal financial control.
- 5) Embedding professional accounting practice.
- 6) Capacity building and training.
- 7) Enhancing financial strategies.
- 8) Understanding and effectively managing its finances (social care).

- 6.9 The capital programme will be reviewed to assess the extent to which borrowing can be stopped or delayed and where borrowing costs can be reduced including through the sale of assets currently owned by the Council. The review will include:
- a) All spend from capital will need to be reviewed including committed programmes to identify what can be paused or stopped without significant additional cost.
 - b) Finance will undertake a review of borrowing to determine whether there are any options to refinance and reduce interest costs.
 - c) Review all assets to identify further assets that can be sold and add them to the current planned asset disposals.
 - d) The reviews will be led by Finance but will require collective ownership by all members of the Corporate Leadership Team as well as input from Executive Councillors.

Exceptional Financial Support

- 6.10 The Section 151 Officer will engage with the Department for Levelling Up Housing and Communities (DLUHC) to request Exceptional Financial Support for the current financial year 2023/24. In practical terms this will be to seek permission to capitalise revenue expenditure so that it is treated as capital expenditure and can be met from the Council's capital resources. Having regard to the Council's existing voluntary debt cap this will require the amount capitalised to be funded by asset sales. This is likely to require a greater quantum of asset sales to be identified and progressed through the Council's Capital Board. DLUHC Officials have confirmed that any Exceptional Financial Support is only normally offered "for the residual funding amount" once a council has demonstrated a plan to reduce the amount required through savings proposals, asset sales and other activities as part of its Financial Recovery Plan.

Setting and Delivery of a Balanced Budget

- 6.11 Having regard to the extent of demand pressures currently being experienced, notwithstanding the mitigations underway and further proposed by the Spend Control Policy, it is clear that the scale of required savings to set a balanced budget in 2024/25 will be significant. Budget proposals will be informed by the findings from our Duties and Powers Review (a methodology that allows for service provision to be discharged in line with minimum legal requirements to be costed resulting in the identification of savings options) that has been undertaken which brings forward significant savings proposals for Members' consideration at Budget Council in February 2024.
- 6.12 At the same time the Council will be required to articulate its revised policy framework demonstrating that its plans for delivery align with the reduced resources available. This will require the articulation of a revised core offer stating clearly the services it offers and those it does not, and put in place the necessary arrangements to deliver the changes required. This will include significantly reducing the number of employee posts at the council.

6 Finance colleague comments (including implications and value for money)

Financial Issues are the subject of this report and are addressed in the body of the text above

Shabana Kausar – Director of Finance and Deputy Section 151 Officer – 12 December 2023

7 Legal colleague comments

- 7.1 The issuance of the report by the section 151 officer under section 114 (3) of the Local Government Finance Act 1988 is a mandatory statutory requirement placed on him in circumstances where it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure. In issuing the section 114 (3) report the section 151 officer has formed that opinion in relation to the 2023/24 financial year and is therefore discharging the statutory duty placed on him.
- 7.2 The obligation now placed on the authority under section 115 (2) of the Local Government Finance Act 1988 is to consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.
- 7.3 If the authority agrees with the views contained in the report then the statutory spend restrictions contained in section 115 (6) fall away on the first business day after the meeting. However, it would be seen as both rational and prudent for non-statutory spend control policies to remain in, or be put, in place in order to assist the section 151 officer in delivering reductions in the authority's expenditure.
- 7.4 In the event that the authority disagrees with the report then the section 151 officer would have to consider the issuance of a further section 114 (3) report which would then have the effect of reintroducing statutory spend restrictions for a further prohibition period of up to 21 days whilst another meeting was arranged to consider the response to the further report.

*Malcolm R. Townroe – Director of Legal and Governance and Monitoring Officer – 8
December 2023*

8 Other relevant comments

- 8.1 None

9 Equality Impact Assessment (EIA)

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

No



An EIA is not required because the impact of any future changes to service delivery will be assessed, including those being put forward as budget proposals for 2024/25.

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

None

11 Published documents referred to in this report

- Period 6 Budget Monitoring Report to Executive Board 21 November 2023
- Finance Improvement Plan Update to Audit Committee 24 November 2023

Report made under part VIII s.114(3) of the Local Government Finance Act 1988 ('The Act')

To: All Councillors of Nottingham City Council

From: Ross Brown, Corporate Director of Finance & Resources, and s.151 Officer

Date of Report: November 29th, 2023

1. Purpose of report

1.1 Members of the Council are required to consider this report made by me as the Council's Chief Finance Officer and s.151 Officer under s.114(3) of the Local Government Finance Act 1988, because in my professional opinion the expenditure of the authority incurred (including expenditure it proposes to incur) in the 2023/24 financial year is likely to exceed resources (including sums borrowed) available to it to meet that expenditure. The purpose of this report is for me to formally notify the Council that in my opinion the Council is unable to meet its statutory requirement to deliver a balanced budget for 2023/24.

2. Executive summary and context

2.1 My reasons for issuing this report are:

- At the end of Period 2 (May 2023) the gross forecast General Fund position was a £28.076m overspend and a net forecast General Fund position overspend of £25.894m against the approved net budget for the General Fund in 2023/24 of £261.8m (net 9% adverse variance)
- In June 2023 the Council mobilised a Financial Intervention Strategy to address the in-year pressures which realised £5.048m of in year reductions
- During the subsequent months, the operating environment and wider economic context continued to be highly volatile with small changes in demand disproportionately materialising in large financial pressures, particularly in social care and homelessness
- As these further pressures began to emerge, the Council developed corrective actions up to the end of October 2023, in response to the issuance of a formal notice of concern by the CFO (s.151) to the Head of Paid Service which yielded an additional £13.251m of in year reductions
- In addition to the above, Council considered the appropriateness of the deployment of service held reserves alongside the release of technical and treasury items. This resulted in the application of £9.492m, and £5.758m respectively, reducing the gross pressure by a £15.250m
- At the end of Period 6, the Council was forecasting a gross General Fund pressure of £56.899m with over 80% of the forecasted pressures being in People's services.
- The cumulative impact of the one-off in-year management and corrective actions (including the use of reserves set out above) and the deployment of technical options resulted in a net forecasted General Fund pressure for the year of £23.351m
- As part of my CFO (s.151) assessment of the Council's ability to deliver a balanced budget in year as required under part VIII of the Local Government Finance Act 1988, I have considered the suitability of deploying further reserves in year. This assessment was undertaken on a

multi-year basis (4-year medium-term financial plan), considered the overall adequacy of reserves, considered all relevant CIPFA guidance, and an assessment of risk exposure. I have concluded that it would not be prudent for the Council to act in this way.

- 2.2 Council must meet within 21 days of the date of this s.114(3) report to decide if it
 - a) agrees with the views contained within the report and
 - b) to agree what action, if any, it proposes to implement.
- 2.3 For the duration of up to 21 days, a Prohibition Period that legally stops all new agreements that may incur expenditure (at any time) is implemented immediately and will end the first business day after the Council meeting. Spend control measures will continue after Council meets, if this is part of the agreed action plan the Council decides to implement to mitigate the overspend.
- 2.4 I have undertaken extensive engagement with key stakeholders including Corporate Leadership Team, Leader and Deputy Leader, the Executive, External Auditors(Grant Thornton LLP), the Improvement and Assurance Board (IAB), Local Government Association advisors and Department for Levelling Up, Housing and Communities (DHLUC) over the last few months
- 2.5 This s.114(3) report is issued following extensive engagement with both the Chief Executive (Head of Paid Service) and the Director of Legal Governance (Council's Monitoring Officer).

3. Actions that the Council must now take in response to this s.114(3) report

- 3.1 A Prohibition Period starts immediately from the date of this report. During this period the Council must undertake the following:
 - a) A Full Council meeting must be convened within 21 days from date of this report to discuss and decide if it agrees or disagrees with my views and confirms what actions, if any, it proposes to take.
 - b) Financial Controls during the Prohibition Period will be exercised by a s.151 Spend Control Board, chaired by the s.151 Officer. Specifically, this will mean:
 - i. The spend controls instigated from June 2023 are to be extended and/or enhanced.
 - ii. The Council is prevented, without explicit written agreement of the s.151 Officer, from entering into any new agreement or commitment for expenditure until Full Council has met to consider the s.114(3) report. It may be deemed necessary to extend these controls after Full Council has met as part of the proposed recovery plan.
 - iii. All new expenditure must stop with immediate effect unless there is written confirmation from the s.151 Officer. To be clear, all non-compliance with this requirement will be considered a disciplinary matter by the Council. There are no exemptions, exclusions, or financial delegations of authority to either CLT, Officers or Members.
 - iv. The controls outlined in (i), (ii) and (iii) above will apply to the following, where individual business cases will need to be reviewed by the s.151 Spend Control Board

- all Council services regardless of funding, including those where the Council has a legal duty, and
 - all services being delivered through companies controlled by the Council, or where the Council supplies funding to companies that are jointly or partly owned by the Council.
- 3.2 To note that during the Prohibition Period failure to comply, without authority, with the restrictions as set out in 3.1(b) above, will be deemed a disciplinary matter
- 3.3 If Council agrees with the views detailed in this report, it will take immediate steps to mitigate the forecast 2023/24 overspend by proposing a financial recovery plan to deliver a balanced budget as legally required which should include:
- a) Delegation to the s.151 Officer to further develop and implement the financial recovery plan which will bring the General Fund back to a balanced position, including reporting requirements.
 - b) Continuation of s.151 Spend Control Board implemented during the Prohibition Period.
 - c) Review of existing commitments which includes assessment of the capital programme (including delaying existing projects and expediting assets for sale).
 - d) Consideration of the delivery of any 2024/25 draft budget proposals in 2023/24
 - e) The consideration of any service cessation in 2023/24 that the Council does not have a legal duty to fulfil
- 3.4 Note that the CFO (s.151) will formally engage with Government through the Department for Levelling Up, Housing and Communities (DLUHC), to request Exceptional Financial Support (EFS).
- 3.5 If controls are not adhered to, or do not achieve the required outcomes, a further s.114 report will need to be issued.

4. The Council's Financial Position

- 4.1 Since my appointment as the Council's permanent s.151 Officer in January 2023 I have been conscious of the limited financial control environment in place at the Council and have instigated significant controls through the Finance Improvement Plan to improve clarity and transparency that have shaped and influenced my professional assessment of the Council's financial position.
- 4.2 At Period 2 (May 2023) the Council's gross forecast General Fund position was £28.076m overspend and its net forecast General Fund position overspend was £25.894m against the approved net budget for the General Fund in 2023/24 of £261.8m (net 9% adverse variance). This was reported and discussed at Executive Board with Members in July 2023. The key drivers of the overspends were:
- Increased demand (Adult social care volume and need, Childrens' social care package volumes and complexities , home to school transport and temporary accommodation)

- Non-delivery of Transformation savings
 - Increased costs (particularly in Childrens' social care packages and temporary accommodation) and broader provider inflationary pressures
 - Nationally agreed pay agreement, above the 2023/24 budgetary provision
 - Income shortfalls
 - Pressures relating to non-qualifying capital recharges
- 4.3 At this point a Financial Intervention Strategy that was intended to facilitate better grip of the Council's financial position and reduce the overspend was implemented. This introduced a range of measures including proactive vacancy management, directorate led targeted non-essential spend control including agency and interim spend and technical reviews, alongside department led management action plans reflecting other actions being undertaken.
- 4.4 As described in the Executive Board report regarding Period 6 published on November 13th, 2023 despite the considerable efforts of the Council since July to manage its position, the operating environment and wider economic context continues to be volatile with small changes in demand disproportionately materialising in large financial pressures. These are particularly in Children's social care packages in terms of volumes and complexities, Adult social care volumes, home to school transport and temporary accommodation volumes and costs of provision. The Council is also dealing with the impact of rising costs due to continued high level of provider inflationary pressures, and the impact of cost-of-living crisis which also affects important income streams of the Council.
- 4.5 At Period 6 the Council is forecasting a gross pressure of £56.899m, which after management and corrective actions including the use of reserves of £9.492m to fund gross service pressures, is reduced to a forecast net pressure of £23.351m.
- 4.6 As set out in the Executive Board Budget report in February 2023, the Council was forecasting to hold substantial levels of reserves when viewed as a global figure, but it is important to understand the composition of reserves on an individual basis to fully assess the context of the Councils financial resilience. As described in the provisional 2022/23 outturn budget report to Executive Board on July 18th, 2023, the Council needed to use £9.766m of reserves (unplanned) to deliver a balanced budget.
- 4.7 In setting a balanced budget for 2023/24, the Council temporarily repurposed £20m of earmarked reserves in 2023/24 to establish an adequate balance on the Financial Resilience Reserve. This repurposing is repayable and contained as part of the revised medium-term financial plan (MTFP). It should be recognised that pursuing such a course of action highlighted the fragility of the Councils financial resilience position.
- 4.8 The assessment as to the suitability of deployment of reserves to deliver an in year balanced budget is the responsibility of the Councils Chief Finance Officer (s.151). It sits in a broader context than just an in-year assessment, and in accordance with all relevant CIPFA guidance I have considered not only the immediate circumstances faced in the current year, but also the 4 year MTFP (specifically the significant budget gap for 2024/25) and the overall adequacy of reserves.
- 4.9 I have considered the unique operating context of Nottingham City Council and have judged that the following financial risks need to be considered when determining adequacy of reserves and financial resilience:

- Organisational ability to develop and progress plans
- Delivery record on savings programmes to date
- Likelihood of further in year variances (overspends) against approved budget
- Unforeseen shocks or circumstances resulting in financial cost spikes
- Subsidiary company risk - loans and risk of liabilities materialising
- Prior year accounts and historic accounting treatments & practice corrections
- Assumptions regarding debt collection and impact on the collection fund
- Economic factors such as inflation and interest rate environment
- Major project challenges and failure
- Capital receipts not being sufficient to meet existing capital obligations

Given the Councils recent history, and in the context of the strategic risks set out above it is reasonable and prudent to set aside material amounts within reserves to provide for either a single or multiple scenarios manifesting.

4.10 As CFO (s.151) I have made an assessment that a hypothetical £13.165m of reserves could technically be deployed in year, but this would not only be insufficient to close the gap it would also significantly undermine the financial resilience of the Council, as the consequences of not keeping a minimum prudent level of reserves can be serious. In the event of a major problem, or a series of events (including further overspends in year), the Council could be forced to cut spending during the year in a damaging and arbitrary way, that given the current context of the Councils budget setting methodology of Duties and Powers, could result in the breaching the Council's legal duty.

5. Legal framework for the issuance of a s.114(3) report

- 5.1 S.114(3) of the Act requires that: *“The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.”*
- 5.2 The process for issuing a s.114(3) report and its impact are set out in various sections under the 1988 Act. Although there is no statutory requirement to consult with the Head of Paid service and the Council's Monitoring Officer when considering the issuance of a report under s.114(3), both statutory officers have been fully briefed and engaged regarding the issuance of this report.
- 5.3 S.115(3) requires Full Council to consider and decide on the report made under s.114(3) within 21 days beginning on the day the report is issued. Full Council must consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.
- 5.4 S.115(9) states that *pending consideration of the report by Full Council, there is a Prohibition Period which runs from the date the report is made to the first business day after the Full Council meeting. During this period, the Council must not enter into any new agreement which may involve the incurring of expenditure (at any time) unless the chief finance officer (s.151 Officer) authorises it to do so.*
- 5.5 Subsection (6A) states *the chief finance officer (s.151 Officer) may only give authority for the purposes of subsection (6) if he considers that the agreement concerned is likely to:*

- a. prevent the situation that led him to make the report from getting worse,*
 - b. improve the situation,*
 - c. prevent the situation from recurring.*

- 5.6 Subsection (6B) requires that the authority for the purposes of subsection (6) all approvals shall:
 - a) be in writing,*
 - b) identify the ground on which it is given, and*
 - c) explain the chief finance officer's (s.151 Officer) reasons for thinking that the ground applies.*

- 5.7 S.115(8) states that if subsection (6) is not complied with, the Council shall be taken not to have had power to enter into the agreement (notwithstanding any option to do so under contract or otherwise). Therefore, the Council's actions will be deemed unlawful.

- 5.8 S.116(1) requires the Council to notify its external auditors of the s.114(3) report and the time, date, and place of the full Council meeting. The external auditors also need to be informed of the outcome of the meeting as soon as practicable. The external auditors have been kept informed of the emerging financial position and the planned work I have instigated.

- 5.9 CIPFA guidance recommends that contact is made with DLUHC, lead members and statutory officers in advance of issuing a s.114(3) report. To date all relevant stakeholders have been kept informed on the emerging budget position. This has included Executive Board, key statutory officers, Corporate Leadership Team (CLT), IAB, DLUHC officials and external auditors(Grant Thornton LLP).

Ross Brown CPFA
Corporate Director, Finance and Resources and Section 151 Officer
Nottingham City Council

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Spend Control Policy

Introduction

1. On 29 November 2023, the Council's Section 151 Officer issued a report under section 114(3) of the Local Government Finance Act 1988 (the Act). As a result, spending controls now apply to all new expenditure, without exception, and the process outlined in this document must be followed by all colleagues with immediate effect.
2. Section 115 of the Act states that the Section 151 Officer may only approve spending that:
 - Prevents the situation that led to the issuance of report worsening
 - Improves the situation
 - Prevents it from recurring
3. The Section 151 has taken the view that the financial implications set out above need to be balanced against the Council's statutory duties, particularly in relation to safeguarding and homelessness. The Section 151 Officer will, therefore, consider approving 'allowable spending' in accordance with this policy.
4. 'Allowable spending' will be approved where the Section 151 Officer is satisfied that spending is either:
 - Essential to meet the Council's legal duties, and only to the minimum levels required to meet the duty, or meet existing legal commitments
 - Externally funded spending, where the Council would lose external funding if approval were not given, and
 - Spend where there is a robust business case will be considered by the Spend Control Board.
5. No other spending will be approved.

What is essential spending to meet the Council's statutory duties or existing legal commitments?

6. Essential spending of this sort will relate to a clear (and referenced) legal duty, including regulatory requirements (such as essential health and safety requirements) and existing legal commitments. This means:
- Existing staff payroll and pension costs
 - Expenditure required through existing legal agreements and contracts
 - Payments for goods and services which have already been received
 - Urgent expenditure required to safeguard vulnerable citizens

What constitutes externally funded spend?

7. Externally funded spend, is fully funded by an external grant or funding source and does not impact the general fund. (e.g. Dedicated Schools Grant).
8. Spend that is funded from income generating services under contract to maintain the service and income. (e.g. Commercial Waste) – but only where the cost of exiting the contract will cost more than the spend request.
9. If the spend is partly funded by external income, then as this impacts the general fund there will need to be a robust business case presented to Spend Control Board as set out below.

Business cases

10. Business cases will be considered under this policy if they:
- will deliver a cashable saving compared to current spend within a quantified time period
 - involves some General Fund and income (grant) where the business case shows that delaying spend will lead to significantly more expenditure in the short to medium term - 1-3 years
 - involved recruitment to non-essential posts where costs of delaying recruitment would be higher than costs of the post
 - evidence that the service prevents a more expensive statutory service
 - involve capital decisions that reduce borrowing requirements and/or provide capital receipt

- prevent the loss of an external funding source (e.g. PFI grant from central government) that is used to pay for statutory services
- generate an income stream for the Council above the cost of the expenditure
- mitigates additional commercial risk to the Council.
- ***See Appendix 1 for examples of types of spend***

Process for Spend Approval

11. The spend approval process applies to new spending requests of any value, as listed above in section 1. A new Spend Control Board will oversee all spend decisions.

12. The Council is now prevented, without the explicit agreement of the Section 151 Officer, from entering into any new agreement, contract or commitment of expenditure until instructed otherwise by the Section 151 Officer. This means that:

- **All** existing spend delegations in the constitution or through delegation of powers through decisions are now superseded by the 114 report. Only the Section 151 Officer can approve new spend. This applies to all spend regardless of value or route, to be clear this includes all purchase card spend
- No officer, Councillor, committee or board can approve spend without the prior approval of the Section 151 Officer through the Spend Control Board
- Further details of the spend control process are outlined below

Spend Control Board

13. The purpose of the Spend Control Board is to review requests for new spending processes and advise the Section 151 Officer about the decisions he has to make.

14. The membership of the Spend Control Board comprises:

- Section 151 Officer (Chair and decision maker)
- Head of Paid Service
- Deputy Section 151 Officer

- Monitoring Officer
- Director of Commercial Procurement and Contract Management
- Head of Procurement
- Director of HR and EDI

15. The Spend Control Board will meet daily, and its decisions will be published weekly. A copy of the decision will be returned to the Head of Service as soon as possible after each board

Spend Control Advisory Panel

16. The purpose of the Spend Control Advisory Panel is to triage spend requests and provide advice to Spend Control Board and ensure the smooth running of spend control policy including identifying and deploying staff resources. The Panel will also review the spend control policy and recommend changes to the Spend Control Board.

17. Membership of the Panel will comprise:

- Deputy section 151 officer
- Head of Procurement
- Commercial Systems and Strategy Manager
- Interim Business and Performance Manager
- Head of Legal

18. The Panel will meet at least daily.

Process for DLT approval

19. Directorate Leadership Teams will need to review all spend requests prior to processing for Spend Control Board approval. This will require regular directorate spend panels which would be anticipated to occur on a daily basis.

20. DLT Panels must act as a triage for requests ensuring that only spend that meets the criteria as laid out above is recommended for approval at Spend Control Board.

Emergency Spend Provision

21. Emergency spend is expenditure that is immediately required to protect citizens or staff from immediate harm, that cannot be delayed to allow SCB to review. This must be requested via the relevant Corporate Director via email who will endorse the spend request before forwarding to the Spend Control Board, for retrospective approval. This will allow the initial spend to be incurred and appropriate action taken to protect citizens and staff.
22. Spend Control Board will review the information at the next available Board and confirm whether the spend was in line with this policy or not. SCB could determine that the expenditure must stop or that this can continue until such time as a suitable long-term alternative is approved.
23. Only emergency expenditure to protect citizens and staff from immediate harm will be approved through this route. Any expenditure that is endorsed through this route that does not meet the emergency criteria will be a breach of this policy and could be a disciplinary matter.

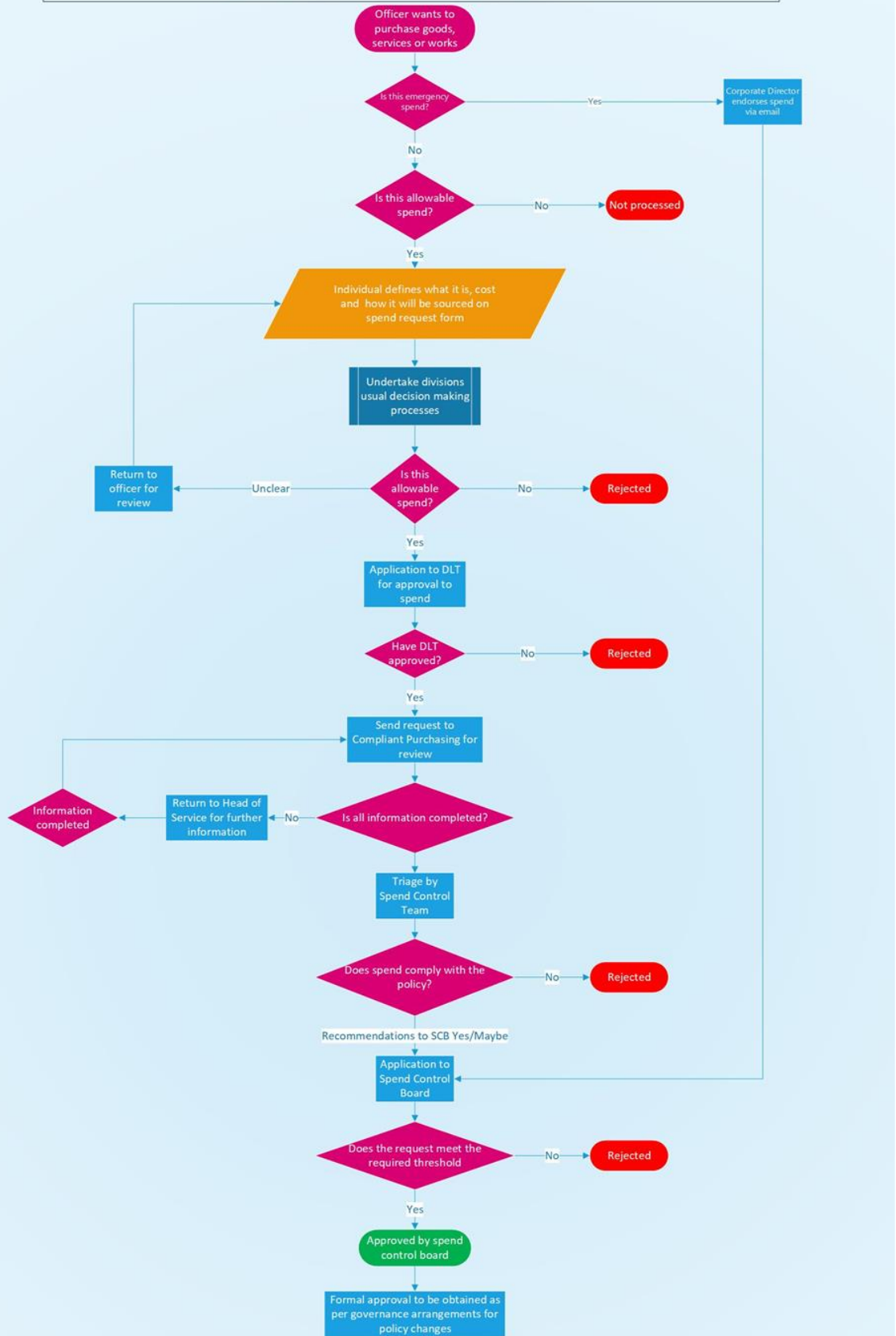
24. Out of Hours

- Services which provide out of hours support such as Temporary Accommodation, Adults and Children's Social Care will need to seek retrospective approval for spend decisions, on a proviso that they follow the same process in determining the need for spend up which has been approved by the Corporate Director / Director in writing.
- Spend Control Board should be presented with the decision on the first working day after the 'out of hours' decision e.g.
 - if the out of hours was over a weekend, then services are expected to bring the decision for approval to Monday's Spend Control Board
 - if the out of hours decision was during the week and between 5pm to 9am then the service is required to bring the
 - decision for approval to the next available Spend Control Board meeting.

Spend Control Process

25. A flowchart showing how the process works is set out on the next page.

Spend Control Process under S114 – all decision making powers have been removed and this process must be followed for all financial decisions



Process changes in line with Financial Intervention Strategy

26. The purchase to pay processes will be changed as outlined in the Financial Intervention Strategy. The following changes to process will need to be followed by all officers without exception.

- **Contract Purchase Agreement**

- i. The generic Contract Purchase Agreement will be switched off and requests need to be made via Compliant Purchasing for new specific CPAs to be set up. CPAs related to new contracts will only be approved when the following are all evidenced
 1. Spend Control Board have approved the expenditure
 2. Contracts have been procured in line with Article 18 Contract Procedure Rules
 3. Relevant approval has been sought in line with the Constitution
- ii. Any CPA requests without the relevant approval will be rejected and reported to the relevant Corporate Director.
- iii. The CPA request process can be accessed via the following link [Procurement \(nottinghamcity.gov.uk\)](https://www.nottinghamcity.gov.uk/procurement).

- **Purchase Orders**

- i. Unless an exemption to the use of Purchase Orders has been received from the Spend Control Board then all invoices must have a purchase order number on them and be presented directly to nccinvoices@emss.org.uk
- ii. Any invoice presented to EMSS without a PO number will be rejected and returned to the supplier.
- iii. All invoices sent to EMSS must be in a PDF format with only one invoice per document. An email can contain more than one invoice but must be a separate PDF for each.
- iv. All requests for payment that do not have a PO number or have a formal exemption from this policy will be rejected.
- v. Goods receipting must only be done when the service has been received, goods receipting in advance must stop.

- vi. Requests for a Purchase Order after receipt of the invoice is a breach of the Constitution and will be reported to the relevant Corporate Director.
 - vii. There will be exemptions from this policy which will be approved by Spend Control Board on submission of an exemption request. As per Appendix 2.
- **Purchase Card Spend**
 - i. With immediate effect all purchase card spend will need prior approval before authorising by the card holder. Any spend that does not have prior approval and is not reviewed will be referred to the relevant Corporate Director as a breach of this policy. Cards used without prior approval will be put on hold whilst they are reviewed.
 - ii. A review of all purchase cards will be undertaken to identify which cards are required for essential spend. All non-essential spend will be stopped and therefore cards will be stopped for colleagues not undertaking essential spend.
- **Travel expenditure**
 - i. Travel expenditure on trains or hotel bookings must be booked through Click travel and the cheapest suitable option taken. Train tickets and hotels must not be purchased through purchase cards for staff travel. Approvers will be reviewing all travel spend before authorising.
 - ii. Travel to award ceremonies, events and conferences is now not permitted in any circumstance. Only essential work-related travel can be approved.
 - iii. Train travel and hotel bookings must not be claimed via payroll expenses except for in exceptional circumstances ie emergency work travel requirement out of normal office hours. This must be approved by the Head of Service or Director.

- **Impact upon contracts**

- i. Potential new contracts**

1. As all non-essential spend has stopped all contracts currently being sourced will need to be reviewed through the Spend Control Board. Any contracts awarded after this policy is implemented without approval of the Section 151 Officer will be a breach of policy.
2. Regardless of the process or the stage in that process all sourcing will be reviewed against the criteria in this policy. Procurement will advise on the next steps in the process and when the spend should be reviewed by the Spend Control Board.
3. No framework call off, direct award, request for quote or tender will be able to be completed without the prior approval of the Spend Control Board. The approval should be sought at the earliest opportunity regardless of the stage in the process no new public notice will be approved without Spend Control Board approval.

- ii. Contract Variations and Extensions**

1. No new contract variation or extension can be approved that incurs additional cost without Spend Control Board approval for the spend. Including extensions that have been included as part of the original contract.
2. Any variation that is not formally signed that will increase cost will need to be approved by the Spend Control Board before formalising within the contract.

- iii. Review of existing contracts**

1. All existing contracts must be reviewed by the Contract Manager to identify any options for reducing cost through anyone of the following:
 - a. Is the contract essential if not can it be terminated without incurring additional cost

- b. Variation to the contract by reducing activity levels, quality or price
 - c. Ensuring volume discounts are managed in line with the contract
 - d. Is there alternative supply options that could be considered at lower cost
- 2. Engage the Commercial Hub to ensure any contractual changes are compliant with Public Contract Regulation 2015, Concession Contract Regulations 2016 or Utilities Contract Regulations 2016. Please note Article 18.110 requires the Head of Procurement or their nominated representative to approve any contract variation and this will be enforced any identified breach will be reported to the relevant Corporate Director.

iv. Financial Recovery Plan

- 1. Review of existing revenue spend – what should be stopped in line with criteria laid out in section 1 above?
- 2. All revenue spend needs to be reviewed by directorates to identify any spend that is currently in process that would not be deemed essential. Any non-essential spend should be stopped wherever possible. This includes contracted spend see above.
- 3. This needs to include current and future years expenditure and links to MTFP plans for 2024/25.
- 4. Review of capital programme – including reducing borrowing costs. Can we stop or delay capital expenditure, reduce costs of borrowing or sell assets currently owned by the Council.
 - a. All spend from capital will need to be reviewed including committed programmes to identify what can be paused or stopped without significant additional cost.
 - b. Finance will undertake a review of borrowing to determine whether there any options to refinance and reduce interest costs.

- c. Undertake a review of existing reserves and capital receipts to identify options for reducing the deficit.
- d. Review all assets to identify further assets that can be sold and add them to the current planned asset disposals.
- e. The reviews will be led by Finance but will require collective ownership by all members of the Corporate Leadership Team as well as input from Executive Councillors.

This policy

27. This policy will remain in place until Full Council have agreed a Recovery Plan to mitigate the current overspend and predicted budget deficit for 2024/25.

Including:

- A clear deliverable plan for reduction in spend in 2023/24 including savings.
- A budget plan for future years that resolves the budget deficit over the next 3 years including detailed achievable savings.

28. The Section 151 Officer is able to determine whether the plans are sufficient and achievable, only when they are satisfied will any relaxation of these spend controls be considered. There will need to be significant evidence of delivery in order for these controls to be lifted.

Appendix 1

Appendix (i): Examples of essential and non-essential spending:

Essential Spending

Statutory Services: These are services that the council is legally obligated to provide and are considered essential. They typically include:

- Education (e.g., schools and special educational needs support)
- Social services (e.g., child protection, adult social care)
- Public safety (e.g., police and fire services)
- Waste collection and management
- Public health services (e.g., public health inspections, disease control)
- Debt Servicing: payments on outstanding loans and debts are essential to maintain the council's financial integrity
- A library service

Staffing for Essential Services: - employee salaries and benefits related to delivering statutory services.

Maintenance and Repairs: - funding for essential infrastructure maintenance and repairs to ensure public safety and service continuity.

Emergency Provisions: - funds set aside for unforeseen emergencies or contingencies that could impact essential services.

Non-Essential Spending

Discretionary Services: - these services are not legally required but may enhance the quality of life in the community. Examples include:

- Parks and recreational facilities
- Cultural and arts programs
- Leisure centres and sports facilities
- Library Buildings

New Capital Projects: - investments in new infrastructure or construction projects that are not immediately necessary for public safety or statutory obligations.

Consultancy and Professional Services: - spending on external consultants, advisors, or professional services that are not directly tied to essential services or legal requirements.

Marketing and Promotion: - advertising and promotional expenses that are not critical to the delivery of essential services.

Non-Urgent Capital Expenditures: - capital spending on equipment, vehicles, or technology upgrades that are not immediately required for essential services.

Non-Essential Staffing: - hiring or maintaining personnel for roles not directly related to statutory services, which may include administrative or non-essential positions.

Events and Entertainment: - expenses related to hosting events, conferences, or entertainment activities that are not crucial for service delivery.

Non-Critical Travel and Training: - travel expenses and training programs that are not essential for maintaining statutory services.

Appendix 2 Exemption Request from No PO No Pay

Exemption from raising Purchase Orders

Section 1: Request Originator	
Name:	
Signature:	
Department:	
Date:	

Section 2: Subject	
What spend needs exemption from No Po No Pay policy	
Why is this exemption required? Why can't Purchase Orders be supplied?	

Section 3: Proposed area	
What type of provision is involved	
Total annual value:	
Duration of exemption:	

Section 4: Background & Justification	
Provide an overview and explain why an exemption request is necessary?	
Explain the payment process that will be used?	
What other options have been explored?	
What would the impact be if this request wasn't approved?	

Section 5: Forward Planning	
Will there be an ongoing requirement beyond the expiry date of this request, if it is approved?	

Section 6: Commercial Hub Comments

Head of Procurement	
Name:	
Signature:	
Date:	
Comments:	
Recommendation:	

Section 10: Spend Control Board Approval / Rejection	
Section 151 Officer	
Name:	
Signature:	
Decision	Approved/Rejected
Reasons for decision:	
Subject to the following conditions.	
Date:	

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