

City Council – 9 November 2020

Report of the Lord Mayor

Response to the Report in the Public Interest

1 Summary

In response to the Report in the Public Interest on Nottingham City Council's governance arrangements for Robin Hood Energy Ltd (RHE) (the Report in the Public Interest) Council agreed an Action Plan at an extraordinary meeting held on 27 August 2020. This report recommends the amendment of the Action Plan following a meeting between the Leader of the Council and the Leaders of the two minority groups. It also recommends the establishment of an Improvement Board to support the implementation of the Action Plan and other associated improvement actions.

2 Recommendations

- 2.1 To approve the revised Action Plan (attached as appendix 1). The proposed changes are outlined in paragraph 5.2.
- 2.2 To establish the Nottingham City Governance Improvement Board (the Improvement Board) as a formal committee of Council to support the delivery of the Action Plan and other improvement work. The proposed terms of reference for the Board are attached as appendix 2.
- 2.3 To appoint the membership, substitutes and chair for the Nottingham City Governance Improvement Board as set out in appendix 3.
- 2.4 If the Board is established, to note the minor revisions to the roles of the Overview and Scrutiny Committee and the Audit Committee in relation to monitoring of the Action Plan as outlined in paragraphs 5.6 and 5.7.

3 Reasons for recommendations

- 3.1 To ensure that the Action Plan reflects the views of all political groups, as agreed at a meeting between the Leader of the Council and the Leaders of the two minority groups following the Extraordinary Council meeting on 27 August 2020.
- 3.2 To support the effective delivery of the governance improvement outcomes required by the Report in the Public Interest. The Improvement Board will oversee the delivery of the Action Plan in a way that is transparent, accountable to Council and ensures a wide range of voices, including those independent of the Council, can contribute to that delivery.
- 3.3 To ensure that duplication of work is avoided and responsibilities are well understood by clarifying the roles of the Overview and Scrutiny Committee and the Audit Committee in relation to the monitoring of the Action Plan.

4 Other options considered in making recommendations

- 4.1 No other options considered – Council approved the original version of the Action Plan on 27 August 2020. As amendments have been discussed between the political

groups and are now proposed for agreement these now require approval from Council to ensure there is a single version of the Action Plan and that the Plan has been approved in an open and transparent manner.

- 4.2 Not to establish an Improvement Board – While there is no requirement to establish an Improvement Board, to do so will bring benefits to the Council’s governance improvement work. These include taking an open and transparent approach to the delivery of the Action Plan and ensuring a range of relevant voices are able to contribute to the improvement work.

5 **Background (including outcomes of consultation)**

- 5.1 On Tuesday 11 August 2020, the Council’s external auditor issued a Report in the Public Interest on Nottingham City Council’s governance arrangements for Robin Hood Energy Ltd (RHE) (The Report in the Public Interest). The report was considered at an Extraordinary meeting of Council on 27 August 2020 where Council agreed an Action Plan responding to the recommendations made in the report. At that meeting, the Leader of the Council agreed to meet with the Leaders of the two minority groups to discuss the report and the action plan.
- 5.2 At this meeting, several amendments to the Action Plan were agreed as outlined in italics below:

Recommendation 2

An audit and review of NCC’s approach to councillor membership of each subsidiary company board and any other similar organisations NCC Councillors are appointed to, will be undertaken. This review will fully involve the chief executives/chief officers of the Council’s companies, as well as the Chairs and members of the Company Boards and other subsidiary organisations. *The report to be presented for recommendations and comment to the next Audit Committee meeting before the Report’s formal implementation.*

Those companies whose directors comprise entirely of, or a majority of councillors, will be reviewed as a priority.

Where the authority appoints councillors to the Boards of its companies it should be clear that councillors hold a non-executive position and they should be provided with training and guidance as how this role differs from an executive director.

External guidance on defining the role and legal requirements for local authority company directors and guidance on skill set required will be sought. *This should include ensuring that professional executive directors responsible for the day-to-day running are aware that running a company funded by public money carries with it a requirement to demonstrate value for money for the council tax payer is being achieved.*

Recommendation 3

Essential training will be mandatory and retention of the director role for each councillor will rely on completion of the training on this recommendation. *The training should include the duties placed on non-executive directors, the directors’ duty to protect the financial interests of the companies’ shareholder(s) and the duties placed on a director when the company is*

financially insolvent and the personal financial consequences for failing to take appropriate action to safeguard the interests of creditors in an insolvent situation.

In addition to the above, refresher training will be required on a yearly basis; or more frequently should there be any applicable regulatory or legal changes to the legal duties placed on directors. Councillors who fail to complete this training, within three months of it becoming due, will be formally removed from holding the office of director.

Recommendation 8

The s151 Officer will make recommendations to CGESC regarding action to be taken in the event that Companies do not comply with the required reporting requirements. *This should include the options and sanctions available to the Council as shareholder under the Companies Act 2006 to compel co-operation from the directors of Council owned companies.*

Recommendation 10

This review will be made available to the Audit Committee for discussion and recommendations before final implementation.

Recommendation 11

As part of that review, the specific corporate role and resources for the shareholder representative duty will be examined and in particular how it safeguards the Council's financial interests *and how concerns about financial risks by the Council's S.151 officer are communicated to the Council's shareholder representative.*

- 5.3 The Action Plan has been amended as a result of these discussions and the revised version is attached as appendix 1. It is recommended that Council agree the revised action plan.
- 5.4 Although not an agreed action or recommended in the Report in the Public Interest, it is proposed that Council establishes a Governance Improvement Board to oversee the implementation of the Action Plan. The full draft terms of reference are attached as appendix 2 but, in brief, the role of the Board would be to:
- a) deliver and drive progress against the PIR Action Plan
 - b) support improvement in the Council's wider governance arrangements
 - c) ensure that a range of voices, including those independent of the Council, contribute to the development of governance at Nottingham City Council.
- 5.5 The Committee will be a politically balanced committee of Council, with two places offered to individuals who are independent of the Council. Places on the Board will also be reserved for the Leader of the Council and the Chairs of the Overview and Scrutiny Committee and the Audit Committee. While these individuals Chair Council Committees that fall within the remit of the Action Plan it is important that these bodies are represented on the Board. Any conflicts of interest that might arise will be managed in accordance with the law, the Constitution and best practice. Appendix 3 sets out the proposed membership and, where applicable, substitutes and chair of the Board (to follow).
- 5.6 The draft terms of reference for the Board include recommending non-executive amendments to the Constitution to Council as one of the Board's responsibilities. This overlaps with the role the Audit Committee currently holds. During the period that the Board is meeting, it is proposed that the Audit Committee continues to consider

'business as usual' non-executive amendments to the Constitution but that the Improvement Board is responsible for recommending constitutional amendments relating to governance improvement.

- 5.7 At the Extraordinary meeting on 27 August the Council noted that the Executive would receive quarterly updates on progress against the Action Plan and that those updates would also be regularly scrutinised by the Overview and Scrutiny Committee and the Audit Committee (having regard to their respective terms of reference). Following the establishment of the Board it is proposed that primary responsibility for reviewing progress against the Action Plan is taken by the Board with the Chairs of Overview and Scrutiny and Audit both having seats on the Board. However, this does not preclude these Committees from undertaking their own work on the action plan where this would be of value.

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

- 6.1 There are no financial implications associated with setting up the Improvement Board.

Theresa Channell, Head of Strategic Finance and Deputy Section 151 Officer
30 October 2020

7 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)

- 7.1 The Report in the Public Interest was issued under the provisions of the Local Audit and Accountability Act 2014 ("the Act"). The Council must comply with the requirements of the Act in responding to the Report.
- 7.2 Under the provisions of the Act, the Council must decide whether the Report requires the authority to take any action or whether the recommendations are accepted. At the Extraordinary Council meeting on 27 August 2020 Council agreed the recommendations and approved the Action Plan prepared in response. Any amendments to the Action Plan must be agreed by Council.
- 7.3 The Improvement Board is being established in response to the Report in the Public Interest. As the response to the Report in the Public Interest is a Council function the Improvement Board is being established as a non-executive committee. In accordance with the Council's Constitution it is for full Council to establish the committee, agree its terms of reference, determine their composition and make appointments to it. As a fully constituted committee of Council it must be politically balanced. It can include external co-opted members.

Beth Brown, Head of Legal and Governance - 8 October 2020.

8 Equality Impact Assessment (EIA)

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

No



An EIA is not required because:

- Each of the individual actions included in the Action Plan will require an equalities impact assessment produced as part of the work undertaken; and which will need to be considered in respect of any formal decisions to changing governance practice.

- Any improvements to governance that arise from the implementation of the recommendations in the action must pay due regard to ensuring that all citizens in Nottingham are able to understand the actions the Council takes in their name, the decisions it makes to spend resources on their behalf, and who is accountable for that action.
- Close attention will need to be paid to ensure the Council is as transparent as possible and is as open and engaging with local people as possible through this process of improvement and afterwards in the new practice established.

9 List of background papers other than published works or those disclosing confidential or exempt information

9.1 None

10 Published documents referred to in compiling this report

10.1 Report in the Public Interest on Nottingham City Council's governance arrangements for Robin Hood Energy Ltd (RHE)

10.2 Reports to and minutes of the Extraordinary meeting of Council held on 27 August 2020

10.3 Terms of reference of the Audit Committee

**Councillor Rosemary Healy
Lord Mayor and Chair of Council**