

## Companies Governance Executive Sub-Committee – 17 November 2020

<b>Subject:</b>	Company Director Training and Development: Roles & Responsibilities of Members		
<b>Director:</b>	Malcolm R. Townroe – Director of Legal and Governance		
<b>Portfolio Holders:</b>	Cllr D. Mellen; Cllr S Longford; Cllr S Webster		
<b>Report author and contact details:</b>	Daniel Ayrton – Business Development Manager <a href="mailto:Daniel.Ayrton@Nottinghamcity.gov.uk">Daniel.Ayrton@Nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>	Gareth Sayers – Development and Change Manager		
<b>Key Decision</b>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<b>Subject to call-in</b>
			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Reasons:</b>	<input type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
			<input type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Total value of the decision:</b> nil			
<b>Wards affected:</b> none	<b>Date of consultation with Portfolio Holders:</b> 6 November 2020		
<b>Relevant Council Plan Key Theme:</b>			
Nottingham People			<input type="checkbox"/>
Living in Nottingham			<input type="checkbox"/>
Growing Nottingham			<input type="checkbox"/>
Respect for Nottingham			<input type="checkbox"/>
Serving Nottingham Better			<input checked="" type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>			
<p>This report provides an update on progress towards completion of the Action Plan in response to the External Auditor’s report issued in the public interest in August 2020. Specifically this report provides an update to the Companies Governance Executive Sub-Committee on those actions relating to Councillor training and development.</p>			
<b>Exempt information:</b> None			
<b>Recommendation:</b>			
1 That the Committee note the contents of this report and provide any comment or feedback they may have.			

### 1 Reasons for recommendations

- 1.1 This report is for information only and does not ask the Committee for any decisions. Where the report refers to recommendations, these are recommendations for the Governance Improvement Programme moving forward and not recommendations for which approval is being sought from this Committee.

## **2 Background (including outcomes of consultation)**

- 2.1 This report has been prepared as part of the Governance Improvement Programme for the Companies Governance Executive Sub-Committee. The report summarises the work undertaken towards the following action:
- Review existing training packages for Councillors acting in the capacity of company directors
- 2.2 This report draws together the best practice guidance obtained from external parties to identify options for improving the above aspects of company governance. Where appropriate, this report makes recommendations for further action, as well as identifying actions that have been taken to date. These recommendations are not brought to the Companies Governance Executive Sub-Committee for decision, but for comment and for information.
- 2.3 A total of 29 legal entities were included in the initial review of Nottingham City Council (NCC) companies as being connected to, but not necessarily owned or controlled by NCC at the present time.
- 2.4 Of these, 10 subsidiaries where NCC holds the controlling interest were identified, two of which are inactive companies; Civic Enterprise Nottingham which has never traded, and Nottingham Highways Ltd which was established in preparation for the proposed Highways Operating Group which has not yet further progressed.
- 2.5 The remaining eight subsidiary companies and their board composition and membership form the primary focus of this report, however, in recognition of the broader intent of the Governance Improvement Programme and in anticipation of future actions within the Action Plan, a high level assessment of NCC interest in 16 other companies where there is at least one NCC appointed director has been undertaken.
- 2.6 The review has been limited to current board membership, the appointment process and in particular the power to appoint, and the representation of shareholder interest, or in the case of companies limited by guarantee, member interests.
- 2.7 Nottingham City Council has eight active subsidiary companies limited by shares. With the exception of Nottingham City Transport in which NCC has a 95% shareholding, these companies are wholly owned subsidiaries. These companies are:
- EnviroEnergy Ltd – (Co No 04131345)
  - Nottingham City Homes Ltd – (Co No 05292636)
  - Nottingham City Transport Ltd – (Co No 02004967)
  - Nottingham Ice Centre Limited – (Co No 03563341)
  - Nottingham Revenues and Benefits Ltd - (Co No 09157986)
  - Nottingham Science Park Management Company Ltd – (Co No 05977314)
  - Robin Hood Energy Limited – (Co No 08053212)
  - Thomas Bow Limited - (Co No 04503934)
- 2.8 In addition, the Council has an interest in a further 16 companies. These companies have non-executive directors appointed on behalf of the Council. Four of these

companies are limited by shares and with the exception of Blueprint in which the Council has a 50% shareholding, the Council is a minority shareholder.

2.9 The majority of the remaining 12 companies are limited by guarantee and have aims relating to social value. There is also the Local Enterprise Partnership D2N2 in which the City Council is one of 17 members.

2.10 Out of the companies listed below, Nottingham City Council is a registered person of significant control for three; Creative Quarter Nottingham Limited, Futures Advice, Skills and Employment Limited, and Ticketing Network East Midlands Limited.

- Base 51- (Co No 02672194)
- Blueprint (General Partner) Limited – (Co No 05340186)
- Blueprint Group Holdings (LLP- OC429410)
- Creative Quarter Nottingham Limited – (Co No 08336489)
- D2N2 LEP – (Co No 11914012)
- EMPSN Services Limited - (Co No 5882746)
- First Enterprise Business Agency – (Co No 02817451)
- Futures Advice, Skills and Employment Limited – (Co No 04172770) (was Nottingham & Nottinghamshire Futures Ltd)
- Greater Nottingham Groundwork Trust (Co No 02556957)
- Marketing Nottingham and Nottinghamshire Limited (Co No 03744996)
- Meadows Ozone Energy Services Limited (Co No 07058264)
- Nottingham Playhouse Trust Limited (Co No 05384418)
- Nottingham Racecourse Limited (Co No 00906777)
- Scape Group Limited - (Co No 05660357)
- Scape Procure – (Co No 9955814)
- Ticketing Network East Midlands Limited – (Co No 06623526)

- 2.11 The report of the external auditor identified weaknesses in the governance arrangements for Robin Hood Energy in relation to the aggregate level of critical knowledge and expertise, and the awareness Councillors serving as directors have of their legal duties.
- 2.12 The level of individual knowledge and expertise required of directors will in large part depend on the purpose of their appointment to the board. In the case of Councillors appointed to company boards, they bring significant experience and understanding of their local communities, the Council's vision for the City and expectations and experiences of citizens. Where a company's primary areas of operation is concerned with these dynamics, Councillors are able to make extremely valuable contributions to goals of the organisation. Whilst a Councillor may also bring additional experience, knowledge and skills from roles outside local democracy, it is questionable whether this can be relied on in the long term as the sole means of bringing industry expertise to the board.
- 2.13 Regardless of the varying roles different directors may have, it is essential that all NCC Councillors and Officers are equipped with the basic core competencies and understanding of the legal duties and liabilities associated with their position as a director.
- 2.14 Advice on the core competencies and training required to effectively discharge the duties of directors has been sought from appropriately qualified external bodies which, alongside guidance found in the review of best practice, has been used to produce a list of training requirements.
- 2.15 A review of training records for Councillors and Officers serving on company boards has been undertaken to identify any previous training that would meet these requirement either in full or in part.
- 2.16 A draft competency framework has been developed by the Learning & Development Team to build from the foundation of training and induction all Councillors receive (as laid out in the Councillor Development Statement) to enable a pipeline of progression into company directorships, where appropriate, up to and including the development of industry specific knowledge and skills.



- 2.17 The annual development programme in place for all councillors covers essential learning and desirable learning associated with their roles and responsibilities. Much of this training will lay the foundations and provide fundamental skill development for Company Directors which they should then add to through core, advanced and specialist learning as required.
- 2.18 All Councillors receive essential training and are encouraged to take part in refresher training annually.
- 2.19 Essential Learning:
- Code of Conduct
  - GDPR
  - Information Security
  - Safeguarding
  - Governance and Decision Making
  - Local Government Finance
- 2.20 A Councillor Development Programme is put together each financial year, consisting of in-house learning facilitated by the Council's Development and Change Team, sessions from East Midlands Councils and from the Local Government Association.
- 2.21 These cover a wide range of topics and again provide fundamental skills and knowledge to support councillors in their councillor duties and as company directors.
- 2.22 In 2019/20, thirty-seven (37) external development opportunities were accessed, covering sessions in (not exhaustive):
- Audit
  - Finance
  - Emergency Planning
  - Licencing
  - Adult, Children's and Health
  - Public Speaking

- 2.23 In 2019/20, forty-seven (47) internal development opportunities were accessed, covering sessions in:
- Chairing Skills
  - Personal Resilience
  - Adult Social Care
  - Dementia Awareness
- 2.24 Cross referencing learning records with councillors who are also company directors, thirteen (13) of twenty-six (26) accessed some form of development in 2019-20.
- 2.25 Whilst there are instances of training and professional development that would certainly contribute to being an effective board member, there is limited evidence of training to enable them to fully and effectively execute the duties of directors.
- 2.26 This is not say that training hasn't taken place, and there are anecdotal accounts of such training being delivered as well as some evidence of training having been commissioned by the companies themselves. The records held by the Council of attendance and course content do not provide a robust basis to form a judgement on the sufficiency of such training.
- 2.27 The gap is partly explained by Councillor training records having only transferred to the Corporate system in 2018, however, in the absence of a clear record it is recommended that all Councillors serving in the role of company directors regardless of whether it is a wholly owned subsidiary.
- 2.28 The proposed content of the training is set out below:

Area	Content
The role of a company director:	<ul style="list-style-type: none"> <li>→ The different types of directors and how their roles differ</li> <li>→ Understanding to role of non-executive directors and independent non-executive directors</li> <li>→ Understanding the division of roles between directors, Council officers, company officers and elected member</li> <li>→ Understanding the relationship between Council officers and company directors</li> <li>→ Directors' duties and obligations to third parties</li> <li>→ The role and representation of shareholders and shareholder interests including formal agreements and oversight of the board</li> </ul>
Legal obligations for directors:	<ul style="list-style-type: none"> <li>→ The directors' general duties as specified by the Companies Act</li> <li>→ Understanding 'first duty' of directors</li> <li>→ The legal obligations of elected members and Council officers and conflict of interests</li> <li>→ Managing and resolving conflicts of interest</li> <li>→ Liabilities of directors</li> <li>→ Personal liabilities of directors and common sources of personal risk</li> <li>→ Criminal risk and civil risk</li> <li>→ Health &amp; Safety and corporate manslaughter</li> <li>→ Data protection</li> <li>→ Anti-bribery and anti-money laundering</li> </ul>
Company structures:	<ul style="list-style-type: none"> <li>→ Commercial company structures in local government</li> <li>→ Different company structures and how they can be used by local authorities</li> <li>→ Teckal companies and how they operate</li> <li>→ Best value principles in arms length or Teckal arrangements and understanding the role of client</li> </ul>

Board effectiveness:	<ul style="list-style-type: none"> <li>→ The role of the board</li> <li>→ Policy development and process</li> <li>→ Management of board meetings and support directors should expect from the company</li> <li>→ Rules for board meetings and formal decision making processes</li> <li>→ The role of company chair</li> </ul>
Risk Management:	<ul style="list-style-type: none"> <li>→ Understanding the principles of risk management in a company setting</li> <li>→ Risk appetite and risk tolerance</li> <li>→ Different techniques for evaluating and managing risk and uncertainty</li> <li>→ The common sources of risks facing a company and approaches taken to managing these</li> </ul>
Corporate culture and corporate social responsibility:	<ul style="list-style-type: none"> <li>→ The importance of culture and values to a company</li> <li>→ Board leadership and establishing corporate culture</li> <li>→ Establishing a clear vision, purpose and values of an organisation</li> <li>→ Strategy development</li> <li>→ Corporate social responsibility in practice</li> </ul>

2.29 Based on the review of best practice, and as outlined in the UK Code, it is also recommended that company Chairs of Council subsidiaries commission annual independent evaluation of board performance by an appropriately qualified body which will report back to the board and to the Companies Governance Executive Sub-Committee.

### **3 Other options considered in making recommendations**

3.1 None

### **4 Finance colleague comments (including implications and value for money/VAT)**

4.1 There are no direct financial implications associated with the recommendation in this report however the review of training packages for Councillors acting in the capacity of company directors could have an indirect financial benefit.

Ceri Walters, Head of Commercial Finance – 6 November 2020

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

5.1 There are no significant legal implications arising out of the issues raised in this report.

Dionne Sreaton, Acting Senior Solicitor – 6 November 2020

### **6 Social value considerations**

6.1 None

### **7 Regard to the NHS Constitution**

7.1 N/A

**8 Equality Impact Assessment (EIA)**

An EIA is not required because the report does not call for any decision by the Committee and is for information and update only.

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

9.1 None

**10 Published documents referred to in this report**

10.1 None