

Nottingham City Governance Improvement Board – 9th December 2020

Title of paper:	Governance Improvement Programme – Progress Update		
Director(s)/ Corporate Director(s):	Malcolm Townroe, Director of Legal and Governance	Wards affected: All	
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Other colleagues who have provided input:	Beth Brown, Head of Legal and Governance		
Date of consultation with Portfolio Holder(s) (if relevant)	Councillor Longford, 30 November 2020		
Relevant Council Plan Key Theme:			
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"/>
Summary of issues (including benefits to citizens/service users):			
<p>In response to the recommendations in the Public Interest Report of the External Auditor (the PIR), Nottingham City Council formally adopted an Action Plan in August 2020, that was subsequently amended in November 2020, setting out a series of actions to address the issues raised by the External Auditor.</p> <p>A Governance Improvement Programme has been established to deliver the Action Plan. This report updates on progress of the programme to date in delivering the actions.</p> <p>This first update report to the Nottingham City Council Improvement Board (“the Improvement Board”) covers the period of October to mid-November of the Plan. Subsequent reports will cover later periods of the Plan.</p>			
Recommendation(s):			
1	The Improvement Board is asked to the note the progress to date, consider the information provided in the report, and use it to inform questioning and make recommendations where appropriate.		
2	That the Improvement Board provides any comment they may have for inclusion in the final overarching lessons learned report due to be presented to full Council in January 2021		

1 Reasons for recommendations

- 1.1 The Improvement Board has been established to oversee the delivery of the Action Plan responding to the Report in the Public Interest concerning the Council’s Governance Arrangements for Robin Hood Energy Ltd (the PIR) and to review wider governance issues at Nottingham City Council.

- 1.2 The purpose of the Improvement Board is to deliver and drive progress against the PIR Action Plan, support improvement in the Council's wider governance arrangements and ensure that a range of voices, including those independent of the Council, contribute to the development of governance at Nottingham City Council.
- 1.3 This report is brought to the Improvement Board to support it in achieving these aims.

2 Background (including outcomes of consultation)

- 2.1 The External Auditor published a Report in the Public Interest (PIR) on Robin Hood Energy in August 2020. The report highlighted a number of areas for improvement, including around Governance arrangements, both of Council owned companies, and more widely.
- 2.2 The findings of the PIR were accepted by the Council and an Action Plan drawn up to address the issues raised. The PIR and Action Plan were formally endorsed by the Council on the 27th August 2020. The Action Plan was subsequently amended by the Council in November 2020.
- 2.3 The Action Plan has 13 recommendations from the External Auditor and an additional 3 further recommendations from the Council, with a clear set of actions underneath. There is a programme of improvement work to deliver the actions in the plan, with a dedicated Project Management Office to lead delivery of the programme. Dedicated workstream leads cover the key areas, and the council owned companies are involved.

3 Overall Progress Update

- 3.1 This report has been prepared as part of the Governance Improvement Programme for the Improvement Board; the report summarises the work undertaken to date towards the actions in the Action Plan, focusing predominately on those that were due by the end of October.
- 3.2 Of the 43 actions in the Action Plan due by the end of December 2020:
 - 18 were due in October and all have been signed off as complete by the officer led Programme Delivery Board.
 - 23 were due in November and are still in progress at the time of writing.
 - 6 are due in December, and are in progress.
- 3.2 The remainder are due beyond the end of December and into 2021. Activity to support delivery of these actions is being undertaken by the Project Management Office (PMO) in conjunction with the relevant workstream leads.
- 3.3 The actions to date have been delivered at pace through the Governance Improvement Programme, with robust internal discussion and challenge, including from the Programme Delivery Board. Going forward, greater external assurance is being sought to improve the robustness, transparency and credibility of the action the Council is taking in response the recommendations of the Public Interest Report (the PIR).
- 3.4 The newly established Improvement Board will have a key role to play in providing robust challenge to the Governance Improvement Programme. The Improvement Board will provide assurance that the actions being taken in response to the PIR are appropriate and credible.

October Progress Update

4.1 A number of actions were due by the end of October. These actions were:

Action Ref	Rec Ref	Action	Deadline
AR02.1	AR2	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.	31/10/2020
AR02.2	AR2	As part of this review, the membership balance of the boards will be considered in aggregate in regard to best practice for achieving diversity, skill set, sectoral knowledge and NCC representation.	31/10/2020
AR03.1	AR3	The review of NCC councillor directors of boards in R2 will also establish the sectoral knowledge required to effectively hold the management of the different companies to account and assess the knowledge and skill set of the existing membership of the boards in relation to that sector or business area. This review will fully involve the chief executives or chief officers of the Council's companies, as well as the Chairs and members of Company Boards.	31/10/2020
AR04.1	AR4	A review of the current training package offered to Councillors as directors on company boards and other similar organisations will be undertaken.	30/10/2020
AR04.2	AR4	External best practice and advice will be sought from both the Local Government Association and bodies in the private sector who advise on company governance and training for directors.	30/10/2020
AR11.5	AR11	Whilst this review is underway the current shareholder representatives will be reviewed, any existing gaps filled and an interim new role definition be drawn up and training provided.	31/10/2020

4.2 The actions tabulated above are intended to address the recommendations of the external auditor numbered 2, 3, 4 and 11 which are listed below:

- **Recommendation 2.** The Council should review its overall approach to using councillors on the boards of its subsidiary companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company Board members.
- **Recommendation 3.** Where it continues to use councillors in such roles, it should ensure that the non-executives (including councillors) on the relevant board have, in aggregate, the required knowledge and experience to challenge management.

This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of councillors.

- **Recommendation 4.** Where councillors are used in such roles, the Council should ensure that the councillors are provided with sufficient and appropriate training which is updated periodically.
- **Recommendation 11.** As part of this review, the Council should consider the appropriateness of the definition of the shareholder role adopted in the 2019 report and give it an emphasis on protection of the Council's financial interests alongside other elements.

4.3 The **findings and recommendations** of the review work are summarised below:

- The current level of NCC appointees to the boards of its subsidiary companies does not provide NCC with overall board control for four out of its eight subsidiaries. This arrangement is inconsistent with the best practice guidance reviewed.
- Where NCC does not have overall board control, it is especially important for reserved matters to be established in a shareholders' agreement or comparable agreement, however no such agreements are in place for six of the eight active subsidiaries.
- A further four subsidiaries have 100% of their board comprised of current or former NCC officers and councillors, and therefore the independent check and challenge identified by the best practice review is absent. Equally, the sectoral knowledge required to effectively hold management to account is insufficient to the task in two of these companies; Enviroenergy and Nottingham Revenue and Benefits.
- Both of these companies are the subject of strategic review and options appraisals, and have effective shareholder representation arrangements in place for the short term. Completion of these reviews and establishment of more sustainable governance arrangements remains a priority for the Authority.
- It should be noted that the other two companies with 100% NCC appointees to the board are Nottingham Science Park Management Company Ltd (which has one Council Officer appointee and should be considered for winding up), and Robin Hood Energy which has been the subject of a strategic review.
- Where NCC has appointed directors to company boards, they are overwhelmingly drawn from elected members rather than Council Officers with only two Officer appointments out of 25 NCC appointees.
- Of those Councillor directorships, eight are held by Executive Councillors, four of whom are members of the Companies' Governance Executive Sub-Committee.
- The review of best practice identified many examples of Councillors acting as directors for Local Authority controlled subsidiaries, and found no reason to recommend the exclusion of Councillors from acting as directors. There is however, an over reliance on elected members to serve as unpaid directors and the use of Executive Councillors,

particularly members of the Companies' Governance Executive Sub-Committee which gives rise to difficult conflicts of interest that are more challenging to resolve.

- Where Councillors and indeed Officers are appointed as company directors, there is limited evidence of training to enable them to fully and effectively execute the duties of directors. This is not say that training hasn't taken place, and there are anecdotal accounts of such training being delivered, but the record keeping of attendance and course content does not provide a robust basis to form a judgement on the sufficiency of such training. This is addressed further in the recommendations.
- A review of the employment history and technical background of directors other than NCC appointees has been conducted, and provides reasonable grounds to accept that appropriate levels of knowledge and experience are present in aggregate in the boards on which they serve.
- The review of best practice has emphasised the importance of diversity in the composition of boards in terms of gender, ethnicity, age and length of service. This information was not available in the period of the review. This is addressed further in the recommendations.
- The review of best practice has identified a need for a clear mechanism for exercising the rights and controls of shareholder or member. This has particular relevance to the appointments process (for Councillor and Officer directorships), that should be strengthened. As listed in the recommendations below, it is considered good practice for the role and rights of shareholder and member to be consolidated in an Executive Committee of the Council.
- Shareholder Representatives (as distinct from the shareholder), are in place for seven of the eight subsidiaries - Nottingham Science Park Management Company Ltd being the exception. While these arrangements are currently sufficient, urgent consideration should be given to replacement of the Shareholder Representative for Nottingham Revenue and Benefits who is leaving the Council's employment shortly. Further consideration should also be given to the capacity of shareholder representatives in the longer term and their role in relation to the shareholder panel identified in the best practice review. Proposals for a formalised role description are included in the body of this report.

4.4 In preparing the October report and recommendations, consideration was given not only to the particular wording of an action, but also to the intended outcome in relation to the recommendations of the auditor and in doing so, a number of additional and follow on actions have been identified.

4.5 As a consequence of the review work undertaken up to the end of October a number of recommendations for action have been produced. These will be presented to full Council in January 2021 as part of the overarching lessons learned report referred to in the Action Plan.

4.6 These additional recommendations are listed below:

Number	Recommendation
1	That further review be undertaken on the non-subsidiary Council companies, noting the evidence gathered as part of this exercise.
2	That the above review give consideration to approval processes for the award of contracts, grants or any other form of funding or financial support to companies with NCC appointed directors.
3	That a decision on the scope and application of the proposed rule in relation to Executive Councillors serving as Chairs of companies whose activity falls within their portfolio be made ahead of November 30th 2020.
4	That Executive Councillors do not serve as members of subsidiary boards where the functions of the organisation in question falls within the remit of their portfolio of responsibilities, and furthermore that no Executive Councillor who is also a member of the Companies Governance Executive Sub-Committee should serve on the board of a subsidiary company.
5	That the terms of reference for the Companies Governance Executive Sub-Committee be amended or added to so as to delegate to it rights of shareholder for all subsidiary companies and the rights of membership of any company limited by guarantee of which the Council is a member.
6	That where possible under the legislative framework for each company, NCC ensure the appointment of 50% of subsidiary directors on each board and make arrangements, either through golden vote or some other means to ensure NCC Officer and/or Councillors are able to exercise an effective majority.
7	That the number of NCC appointees does not, without clear reason, exceed the minimum number of appointees required to achieve a majority in any subsidiary company and that the remainder of directors be filled by Executive Directors and at least one Independent Non-Executive Director.
8	That where permissible under the law, the articles of association for each NCC subsidiary be amended to reserve the right of appointments to the board.
9	That the nominations and appointments process for Directors of all NCC companies be rationalised and include a record of the decision to indemnify Officers or Councillors appointed as directors.
10	That a robust system for recording the decisions of the shareholder/member including appointments and nominations of directors be established. In addition it is recommended that the details of all decisions for

	appointments and current board memberships be published on the Council website.
11	That a review of shareholder objectives for each subsidiary company be undertaken to establish the strategic, policy and financial objectives of the shareholder. These objectives should be set by the Companies' Governance Executive Sub-Committee, with advice provided by relevant senior officers including the Section 151 Officer, Monitoring Officer and Chief Executive.
12	That a shareholder agreement be drafted and put in place between the Council and each of its subsidiaries. This agreement should cover all reserved matters and ensure adequate controls are in place to ensure shareholder objectives are met.
13	That all Councillors serving in the role of company directors regardless of whether it is a wholly owned subsidiary undertake a comprehensive training programme covering the topics identified in the training specification, and that all training be recorded in the corporate training system.
14	That company Chairs of Council subsidiaries commission an 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.
15	That arrangements are made to replace the current shareholder representative of Nottingham Revenue and Benefits as a matter of urgency and that, until the constitution is amended, all such appointments be ratified and recorded at the Companies' Governance Executive Sub-Committee.
16	That consideration be given to the winding up of Nottingham Science Park Management Company Ltd.
17	That the Council engage with the Chairs of its subsidiaries with a view to producing the data on board diversity as outlined in the body of this report, giving due regard to data protection and issues of consent.

- 4.7 Engagement with relevant stakeholders including chief officers of the companies subject to review has been undertaken. This work continues, and more detailed views of company chief officers, shareholder representatives, company chairs and directors will be sought prior to presenting recommendations to full Council for decision.
- 4.8 Additionally, in the process of undertaking this review, legal entities not under the control of the City Council have been looked at, albeit in less depth than for those within the scope of the Action Plan wording. Further investigation of the membership and directorships in these companies would make a valuable contribution to the Council's response to the second recommendation of the external auditor in both letter and spirit.

4.9 Finally, it should be recognised that the merits of specific arrangements for the appointment of directors on the boards of any NCC company are situational and should be viewed in the context of the company at a particular point in time. For this reason an ongoing review mechanism should be incorporated into the final appointments process to ensure it remains fit for purpose and continues to offer the highest levels of assurance.

November Update

4.10 At the time of writing, additional findings and recommendations from the actions due for completion in November are being prepared. These proposals build on the review work completed in October and summarised above.

4.11 The actions completed and findings of the November review work are summarised below:

- In-house refresher training on the legal duties of company directors has been produced and delivery of the training commenced in November. The training specification for more specialised training provision has been shared with a number of providers and a technical solution is being sought for remote delivery.
- A review of the existing Audit Committee terms of reference has been undertaken against identified CIPFA best practice. This review found minor differences in respect of reporting which have not affected Audit Committee business, with the exception of independent external members no other factors were identified from CIPFA best practice.
- Membership restrictions for the Audit Committee and Overview & Scrutiny Committee currently allow for members to hold directorships in Council subsidiaries. This is not consistent with best practice and has the potential to undermine the assurance role of the Committee with regard to Companies Governance Executive Sub-Committee and the companies within the Council group.
- The current wording of the Audit Committee Terms of reference does not adequately set out the relationship with Companies Governance Executive Sub-Committee, Overview and Scrutiny Committee, companies' assurance arrangements, independent members, and Chair's other roles.
- A review of the existing Overview and Scrutiny Committee terms of reference has been undertaken against identified best practice, including an external review of the proposed amendments by the Local Government Association. This review has identified changes to the Terms of Reference that provide greater clarity on the role of the committee, particularly in relation to Council owned companies, Companies Governance Executive Sub-Committee and Audit Committee and a reference to risk management.
- The Commissioning & Procurement Executive Sub-Committee, although not mentioned in the Auditor's report, has a role in protecting the client interests of the Council and VfM, where the Council awards contracts to subsidiary companies. The review of Committee Terms of Reference should therefore be extended to include this Committee.

- Following the formal change to Companies Governance Executive Sub-Committee terms of reference to enshrine shareholder rights, Shareholder representatives should work with the Committee to establish clear shareholder financial, strategic and policy objectives for each company.
- The Council's Corporate Risk Management Framework has been reviewed and updated to incorporate wider risks from the group of companies. The corporate risk register has also been updated to include strategic risks from the group.
- Individual company risk registers have been provided for incorporation into the overall framework for risk management.
- These currently lean heavily towards financial risks. These should be reviewed again following the establishment of clear shareholder objectives for each company to reflect risks to the broader organisational goals.

4.12 As a consequence of the actions and review work undertaken in November additional recommendations will be drafted for inclusion in the overarching lessons learned report presented to full Council in January 2021. These will include the following:

Number	Recommendation
17	That proposals be developed and brought forward for amendments to the Commissioning & Procurement Executive Sub-Committee setting out the Committees responsibilities for providing assurance of VfM in Council contracts with its subsidiaries.
18	That the wording of the Audit Committee Terms of reference should be amended so that the relationship with CGESC & O&S, companies assurance arrangements, independent members, and Chair's other roles were set out.
19	That the restrictions on membership for Audit Committee and Overview & Scrutiny Committee are extended to include Councillors who hold a current directorship in any subsidiary.
20	That standardised recruitment and selection process for Directors will be adopted across all subsidiary companies based on the 'on-merit' principles applied to Nottingham City Council recruitment.
21	That all Director appointments (including interim appointments) will be subject to approval by the shareholder as directed by the Companies Governance Executive Sub-Committee and communicated by the nominated Shareholder Representative.
22	That nominations for Shareholder representatives also be considered by the Companies Governance Executive Sub-Committee with guidance issued by the Monitoring Officer and Chief Executive Officer.
23	It is recommended that further review of companies' risks registers take place in April 2021 in response to the

	shareholder objectives established by Companies Governance Executive Sub-Committee.
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5 Other options considered in making recommendations

- 5.1 Nottingham City Council is currently the subject of a non-statutory review being undertaken by Max Caller CBE, on behalf of MHCLG. The outcome of the review will impact on the Governance Improvement Programme and its activities, and the impact of this will need to be considered in full once the outcome of the Review is known.
- 5.2 Nottingham City Council accepted the recommendations of the Public Interest Report and has endorsed the corporate Action Plan to deliver the required remedial actions in response. Therefore, no other options were considered.

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

- 6.1 The financial implication of the recommendations contained within this report are currently being assessed and will be included in the report to Council in January.

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

- 7.1 There are no significant legal comments associated with this report.

8 Strategic Assets & Property colleague comments (for decision relating to all property assets and associated infrastructure) (Area Committee reports only)

- 8.1 N/A

9 Equality Impact Assessment (EIA)

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

No

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An EIA is not required because: The report does not request any formal decision to be taken at this stage.

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

- 9.1 October Governance Improvement Report

10 Published documents referred to in compiling this report

- 10.1 Public Interest Report from the External Auditor
- 10.2 Nottingham City Council Action Plan in response to the PIR