

BIRMINGHAM CITY COUNCIL

CABINET COMMITTEE - GROUP COMPANY GOVERNANCE

THURSDAY, 15 JULY 2021 AT 14:00 HOURS
IN BMI MAIN HALL, 9 MARGARET STREET, BIRMINGHAM, B3 3BS

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 APOLOGIES

To receive any apologies.

3 MEMBERSHIP OF THE COMMITTEE

Labour Group (2):-

Councillor Brigid Jones (Deputy Leader) (Chair), Councillor Tristan Chatfield (Cabinet Member)

Conservative Group (1):-

Councillor Gareth Moore

Liberal Democrat Group (1):-

Councillor Jon Hunt

4 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

5 TERMS OF REFERENCE

The terms of reference to be noted.

- 3 - 8**
- 6 **PUBLIC NOTES OF THE LAST MEETING - 12 MAY 2021**
- Notes of the meeting to be confirmed.
- 9 - 12**
- 7 **COMPANY UPDATE**
- Information update.
- 8 **TRAINING UPDATE**
- Verbal update of Head of Law - Commercial, Procurement, Privacy & Information
- 13 - 26**
- 9 **GOVERNANCE REVIEW - CIPFA ARTICLE ON LOCAL AUTHORITY COMPANIES**
- Report of the Assistant Director Inclusive Growth
- 27 - 30**
- 10 **CABINET REPORT – PROPCO LTD - CONSULTATION**
- Report of the Assistant Director Inclusive Growth
- 11 **DATE OF THE NEXT MEETING**
- The next meeting is scheduled on Thursday 16 September 2021 at 1400hours.
- 12 **OTHER URGENT BUSINESS**
- To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.
- 13 **EXCLUSION OF THE PUBLIC**
- That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-
- Exempt Paragraph 3

PRIVATE AGENDA

- 14 **CABINET REPORT – PROPCO LTD - CONSULTATION - PRIVATE**
- Item Description

15 **PRIVATE NOTES OF THE LAST MEETING - 12 MAY 2021**

Item Description

16 **COMPANY UPDATE - (COMPANIES AFFECTED BY COVID-19 & BREXIT) - PRIVATE**

Item Description

17 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

6.3 Cabinet Committee – Group Company Governance

Role of Cabinet Committee – Group Company Governance

i. The role of the Committee is to ensure that the Council's strategic objectives are met across the group of companies which either the Council owns or has an interest in, and to support the development of the group in line with the Council's regulations and ambitions.

Functions of Cabinet Committee – Group Company Governance

ii. The Committee's responsibilities include (subject to regulations imposed by the Charity Commission, regarding the independence of charitable entities):

- a) Holding entity Boards to account for their performance with the necessary powers to make and drive immediate change through the Boards;
- b) Supporting the development of entities and making recommendations on the disposal/dissolution of companies (below Cabinet limit on value) and matters such as varying Articles of Association, varying ownership and structure and varying share rights;⁴⁷
- c) Identification of entities' business support requirements;
- d) Providing subsidiaries with clear direction and support in its role as sole shareholder/member, including guidance and training to board members where necessary;
- e) Evaluation of effectiveness of entity board governance structure, processes and recommend changes as required;
- f) Reviewing business plans and strategies of the entities where applicable (to ensure compliance with the Council's strategic direction) to, for example, communicate changing priorities;
- g) Ensuring compliance of the entities with the Council's interests including the Birmingham Business Charter for Social Responsibility;
- h) Oversight of compliance to ensure that taxation, legal and financial interests of the Council together with the Council's Constitution are considered and protected;
- i) Oversight of compliance with procurement rules;
- j) Oversight of compliance to avoid conflict of interest;
- k) Receiving and reviewing entity performance, financial and risk reports;
- l) Advising Cabinet/City Council of issues as appropriate, including on appointments to outside bodies.

Membership

iii. The Cabinet Committee – Group Company Governance has been established by Cabinet with the following membership:

- The Deputy Leader;
- Another Cabinet Member as deemed appropriate by the Deputy Leader;

- One Councillor member from each of the Opposition Party Groups.

iv. The membership of the Committee shall be based on cross party representation.

v. The quorum for a meeting of a Cabinet Committee shall be two Cabinet Members and a member of the opposition.

vi. A substitute member shall be entitled to attend in place of a regular Member provided:

- That a Cabinet Member may only be substituted by another Cabinet Member;
- That Committee Services has been notified of any substitution before the meeting begins.

vii. Once an agenda item has begun with a substitute member attending, the regular Member in respect of whom notification has been received, shall not be entitled to vote on the agenda item as a Member of the Cabinet Committee.

viii. A substitute member will be able to vote during the meeting only when s/he is acting as a substitute for a regular Member.

Rules of Procedure – Cabinet Committee: Group Company Governance

ix. Cabinet Committee decisions shall only be taken based on written report(s) from Chief Officers and after any appropriate advice from the Head of Paid Service, Monitoring Officer and Chief Finance Officer. All reports are to be presented in the template prescribed by the City Solicitor.

x. Cabinet Committee decisions are only effective and actionable provided they are taken in accordance with this Constitution, and when posted on the Council's website by Committee Services and following the call-in process.

BIRMINGHAM CITY COUNCIL

CABINET COMMITTEE – GROUP COMPANY GOVERNANCE

Wednesday 12 May 2021 at 1400 hours
in the Council Chamber, Council
House, Victoria Square, Birmingham,
B1 1BB

Attendance:

Councillor Brigid Jones, Deputy Leader - Chair
 Councillors Tristan Chatfield and Jon Hunt,

Also in Attendance:

Alison Jarrett	Assistant Director - Development and Commercial, Finance & Governance
Georgina Dean	Solicitor, Legal Services
Mandeep Marwaha	Committee Services

1 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised and the meeting noted that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and members of the press/public could record and take photographs except where there were confidential or exempt items.

The business of the meeting and all discussions in relation to individual reports was available for public inspection via the web-stream.

APOLOGIES

- 2 An apology was submitted on behalf of Councillor Gareth Moore for his inability to attend the meeting.
-

DECLARATIONS OF INTERESTS

- 3 There were no declarations of interests made.
-

PUBLIC NOTES OF THE LAST MEETING – 18 MARCH 2021

- 4 The public notes of the last meeting were agreed and there were no matters arising.

COMPANY UPDATE

The following report of the Assistant Director, Commercial and Development was submitted:-

(See document No.1)

The Assistant Director Commercial and Development gave an overview of the latest changes made across the Council's portfolio of companies. Reference was made to point 3.2, amendments to the positions within the Council. Details around this was provided to members.

Key points noted;

- Birmingham Wheels had extended their accounting period.
- There was a change to the registered address and office location for Acivico Limited.

The companies who were eligible for Audit reports and reviews this year, received an unqualified rating. It was noted, the appendix attached to the private agenda contained commercially confidential information and gave detail around the impact of Covid.

The Chair referred to point 3.2 part 3 of the report, and queried who was the person with significant control and had withdrawn themselves from Birmingham Wheels.

In response, the Solicitor, Legal Services notified the Committee, Birmingham Wheels had previously stated an 'unknown person with significant control' on the Companies House. As a result, the Companies House wrote to Birmingham City Council asking for this information to be updated. This had now been updated to reflect, Birmingham City Council as the person with significant control.

No further comments were made by the members.

RESOLVED: -

5

The Committee noted the information provided within the report and at private appendix 1 which contains commercially confidential details concerning associated companies.

NEW COMPANY CREATION

The following report of the Assistant Director Inclusive Growth was submitted:-

(See document No.2)

The Assistant Director Commercial and Development informed members the detail of the new company would be shared during the private agenda as the information was commercially confidential and sensitive at this stage. She reminded members the gateway process of creating new companies i.e. presented to this committee as part of the consultation process. Any questions raised would be highlighted in the consultation section of the report as the decision goes forward.

Councillor Chatfield queried the legal reasons as to why the reasons for the creation of the company were not stated in public.

In response, the Assistant Director Commercial and Development informed members the creation of a new company would be made in anticipation of a decision by Cabinet in June 2021. The Cabinet report would indicate options however, not all the options would involve creating a company hence why discussions would take place in private. The company might be the recommended option that Cabinet take in June. Once Cabinet decide, swift action would need to take place hence the reason for this report to be shared with this committee first.

The Chair noted this would be revisited under the private agenda.

RESOLVED: -

- 6
- (i) Members noted the information provided within the exempt Appendix 1 and set out any comments as part of the consultation process for addressing by the authors prior to the submission to Cabinet for decision.
 - (ii) Members noted that in this regard any conclusions or comments should be limited to the company creation and not the wider subject matter for which the creation of a new company is proposed.

FUTURE BOARD APPOINTMENTS

A verbal update on this item was provided by the Assistant Director Commercial and Development.

Key points noted;

- The document had been circulated prior to the meeting and this was a continuation of a discussion from the previous meeting.
- At the last meeting, members requested to see the updated document, and this had been circulated for members to note.
- Currently, this document was not in public and the draft appendix would be shared at a future Cabinet meeting.
- There were gaps in the document however, this would be completed before presented to Cabinet in June.
- Currently, the document was private as it contained officers' names which had not been confirmed. However, the final appendix would be shared at the Cabinet report in June.

The Chair noted ongoing conversations around the appointments were taking place and these should continue outside of the meeting and ahead of the 2022 elections.

No further comments were made by the members.

7

RESOLVED: -

The Committee noted the verbal update on future board appointments.

TRAINING UPDATE

A verbal update on this item was provided by the Solicitor, Legal Services.

Directors, roles and responsibilities training - Contact had been made with the previous provider who delivered this training and they were pleased to deliver this again. In addition, subject to Covid restriction being lifted, an in-person session would be arranged in September.

Specific Public Sector Training – A possible training option being explored which is delivered by the Civil Service College and beneficial to Directors within the public sector. The Head of Law, Commercial, Procurement, Privacy & Information would explore costs associated with the training. Options of a possible training package would also be considered if available e.g. Trust & Charities Training.

At present, one to one sessions would be delivered individually to new Directors when required.

Members response

- Vital to have training offered to directors and appointees. Training should be kept up to date.
- The public sector training would be a good idea due to adherence to different rules and regulations.
- Health and Safety Training – Exploring options if this can be delivered at the same time as other trainings.
- Backlog of training – A couple of training sessions were indicated as more urgent than others (due to the nature of the companies) therefore, one to one session are being arranged. It was suggested training should be stepped up following the forced halt due to Covid.

8

RESOLVED: -

The Committee noted the verbal update on training.

BIRMINGHAM CHILDREN'S TRUST – PEN PORTRAIT - PUBLIC

The following report of the Chief Executive Birmingham Children's Trust was submitted:-

(See document No.3)

RESOLVED:-

- 9 Members noted the information provided in the report.
-

B: MUSIC (PERFORMANCE BIRMINGHAM) - PEN PORTRAIT - PUBLIC

The following report of the Assistant Director Development & Commercial was submitted:-

(See document No.4)

RESOLVED:-

- 10 Members noted the information provided in the report.
-

DATE OF NEXT MEETING

- 11 The next meeting is scheduled to take place on Thursday 12th July 2021 at 1400 hours.
-

OTHER URGENT BUSINESS

- 12 There was no urgent business to consider.
-

EXCLUSION OF THE PUBLIC

RESOLVED:-

- 13 That, in view of the sensitive nature of the discussion due to take place relating to Birmingham Children Trust, B: Music (Performances Birmingham), companies update (companies affected by Covid -19 and Brexit), future board appointments and the new company creation, the public be now excluded from the meeting.
-

Public Report

Birmingham City Council**Report to Cabinet Committee – Group
Company Governance**

15 July 2021



Subject: Company Update

Report of: Rebecca Hellard, Interim Chief Finance Officer

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O &S Chair(s): Councillor Sir Albert Bore

Report author: Alison Jarrett

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

This report provides Members with an update on changes within entities that fall within the Council's group structure.

2 Recommendations

- 2.1 Members are asked to note the information provided within the report and at private appendix 1 which contains commercially confidential details concerning associated companies.

3 Background

3.1 There have been a number of changes in companies that fall within the Council's group structure, which have been detailed below.

3.2 Company Changes

Details of changes in companies are set out below, where a termination or appointment is made that is not a BCC member, officer or associate it is not noted.

1. CREATIVE ADVANTAGE WEST MIDLANDS LIMITED (03914725) - Registered office address changed from C/O Pkf Cooper Parry Group Ltd One Central Boulevard Blythe Valley Business Park Solihull West Midlands B90 8BG England to Lyndon House Rmy 62 Hagley Road Edgbaston Birmingham B16 8PE on 12 May 2021
2. BIRMINGHAM CURZON REGENERATION COMPANY LIMITED (09095850) - 28-Jun-21 Appointment of Mr Guy Antony Olivant as a director on 28 June 2021
3. BIRMINGHAM CURZON REGENERATION COMPANY LIMITED (09095850) - 28-Jun-21 - Termination of appointment of Martin Richard Stevens as a director on 28 June 2021
4. BIRMINGHAM CHARITIES LIMITED (10392574) - 28-Jun-21 - Appointment of Mr Guy Antony Olivant as a director on 28 June 2021
5. BIRMINGHAM CHARITIES LIMITED (10392574) - 28-Jun-21 - Termination of appointment of Martin Richard Stevens as a director on 28 June 2021

3.3 Annual accounts have been submitted for the following companies:

Company		unqualified audit (where applicable)
BIRMINGHAM GLOBAL LIMITED	Accounts for a small company made up to 31 July 2020	Y
BIRMINGHAM CITY PROPCO LIMITED	Accounts for a small company made up to 31 March 2020	Y
CREATIVE ADVANTAGE WEST MIDLANDS LIMITED	Total exemption full accounts made up to 31 March 2021	N/A
BIRMINGHAM SCHOOLS SPC PHASE 1A LIMITED	Full accounts made up to 31 December 2020	Y
BIRMINGHAM SCHOOLS SPC HOLDINGS PHASE 1A LTD	Group of companies' accounts made up to 31 December 2020	Y
BIRMINGHAM SCHOOLS SPC PHASE 1B LIMITED	Full accounts made up to 31 December 2020	Y
BIRMINGHAM SCHOOLS SPC HOLDINGS PHASE 1B LIMITED	Group of companies' accounts made up to 31 December 2020	Y

ASCARII LIMITED	Total exemption full accounts made up to 31 December 2020	N/A
BRIDGE STREET MANAGEMENT LIMITED	Total exemption full accounts made up to 31 December 2020	N/A
BIRMINGHAM CURZON REGENERATION COMPANY LIMITED	Accounts for a dormant company made up to 30 June 2020	N/A
BIRMINGHAM CHARITIES LIMITED	Accounts for a dormant company made up to 30 September 2020	N/A
BIRMINGHAM WHOLESALE MARKET COMPANY LIMITED	Total exemption full accounts made up to 30 September 2020	N/A
BIRMINGHAM WHEELS (ENTERPRISES) LIMITED	Micro company accounts made up to 30 September 2020	N/A

3.4 Covid-19

A review of the material group company interests of the council is an ongoing process to understand the impact of Covid-19 on their business plans and performance. This review is refreshed as further information becomes available both nationally, within the industry categories and within each organisation. This review will continue to be updated and a snapshot reported to each meeting of the Group Company Governance Committee. Where it is indicated that there is a risk of a financial impact to the council then that will be reported within the regular revenue and capital monitoring reports to Cabinet.

The detailed review contains commercially sensitive information that may impact on performance were it to be made public. A private appendix is presented on the private agenda.

From July 19 2021 the impact of the ending of the furlough scheme and the return to more “normal” trading or implementation of recovery plans will be monitored and reported.

4 Options considered and Recommended Proposal

- 4.1 This report provides information to Members on changes to organisations that fall within the Council’s group structure. Further reports will be provided to future meetings of this committee.

5 Consultation

- 5.1 The Chair of the Committee has been consulted in the preparation of this Report.

6 Risk Management

- 6.1 This report sets out information on external organisations associated with the Council.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- a) The Council provides services to community through a number of different vehicles. This report provides information on entities associated with the Council through which service delivery is being provided.

7.2 Legal Implications

- a) The Council's Section 151 Officer has a duty to ensure the proper administration of the Council's financial affairs. The Accounts and Audit Regulations 2015, requires the Council to have effective arrangements for the management of risk.

7.3 Financial Implications

- a) The Council needs to consider whether any of the changes in the company group structure has a financial impact on or increases the financial risks to the Council.

7.4 Procurement Implications

- a) There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- a) There are no human resources implications directly arising from this report.

7.6 Public Sector Equality Duty

- a) There are no equality duty or equality analysis issues relating to the proposals set out in this report.

8 Background Documents

CIPFA Code of Practice on Local Authority Accounting

Public Report

Birmingham City Council**Report to Cabinet Committee – Group
Company Governance**

15 July 2021



Subject: Governance Review – CIPFA Article on Local Authority Companies

Report of: Assistant Director Inclusive Growth

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O &S Chair(s): Councillor Mohammed Aikhlaq

Report author: Assistant Director Development & Commercial

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

In May 2021 CIPFA Published a report by Jo Pitt entitled “The Need for Guidance About Council Owned Companies”. The report provides links to and details on three local authorities who were the subject of recent Public Interest Reports (PIR) that wholly or in part referred to their group company holdings. This report to Cabinet Committee – Group Company Governance (CC-GCG) summarises the findings and notes the recommendations arising from the PIRs, it then considers how the findings may relate to BCC’s own group company governance arrangements.

CC - GCG will discuss the findings in the context of processes already in place and seek to ensure that the council implements improvements where appropriate in order to operate as exemplar in group company governance.

2 Recommendations

- 2.1 To note the information provided within the report and the analysis of PIR recommendations in appendix 1.
- 2.2 To discuss the governance arrangements, the reporting of such within the BCC Group structure and agree priority areas for further work.
- 2.3 To receive a future report on governance process enhancements, including an updated Group Company risk register in light of the experience in other councils.

3 Background

- 3.1 A recent article by Joanne Pitt, local government policy manager at the Chartered Institute of Public Finance & Accountancy (CIPFA) on 25 May 2021 and given at Appendix 2 wrote of the need for guidance about council-owned companies. This article gave examples where recent public interest reports have shown how failures around council-owned companies can have devastating consequences. Her report summarised that the potential for issues can generally be linked to organisational governance, leadership, capacity, financial stability, and culture, including:

- a lack of understanding of roles and responsibilities
- a lack of skills around commercial decision making
- an optimism bias that does not reflect the true position
- a lack of strategic rationale surrounding the creation of companies
- a reluctance to listen to challenges.

- 3.2 Two case studies of recent Public Interest Reports written by External Auditors, Grant Thornton, were provided – Nottingham City Council, Robin Hood Energy and Croyden MBC, Brick by Brick Ltd. The CIPFA article further draws on experience from the recent enquiry into Liverpool City Council. The main findings and recommendations from these reports are given below.

3.3 NOTTINGHAM – Robin Hood Energy Ltd - Grant Thornton Public interest report:

- 3.3.1 Nottingham City Council set up Robin Hood Energy (RHE) in 2015 as a wholly owned not-for-profit subsidiary, in order to tackle fuel poverty in the City of Nottingham and provide a realistic alternative to the 'big 6' energy suppliers. As part of this, it aimed to provide better terms to users of pre-payment meters. As expected, the Company made losses in its early years but reported a small profit of £202,000 in 2017/18 (although this was subsequently amended to a loss of £1.6m as a result of a prior period adjustment as part of the 2018/19 audit). In 2018/19, it made a large loss of £23.1m, giving it cumulative losses to 31 March 2019 of £34.4m.
- 3.3.2 Despite having concerns about the quality of the financial information being produced by the Company, its deteriorating financial performance and therefore its ability to make repayments, the Council decided to make significant additional loans to the Company on several occasions during 2018/19 and 2019/20. The Council faced a choice between continuing to support the company in the hope of recovery or not to support and face losing the investment to date. The PIR

considered this a scenario brought about in large part by the council's own inadequacies in holding the Company to account.

- 3.3.3 The PIR makes a number of recommendations for Nottingham city Council to address in relation to the specific issues with RHE. Appendix 1 shows the specific recommendations from the report and how these might translate to a more general recommendation for assessment against arrangements within BCC.

3.2 London Borough of Croydon - Report in the Public Interest concerning the Council's financial position and related governance

- 3.2.1 The report into the financial position of Croyden resulted in the bulk of the recommendations for improvement. There was one area in relation to a subsidiary company. That company is Brick by Brick Croyden Ltd. This company was set up as a limited company with the Council being the sole shareholder to deliver housing development aiming to address the shortage of housing and the initial business case was presented to Cabinet in September 2014 with the governance arrangements being reported to Cabinet in June 2016. By the 2020/21 Budget, the governance arrangements had been strengthened through the Shareholder Investment Board and a Client Monitoring Group. The external auditors in their review found inadequate evidence within the Cabinet minutes of any degree of challenge to the company including clear governance arrangements on how its interests (as sole shareholder) are safeguarded and the extent to which the original aims of the business plan are being achieved. There was also an inadequate formal reporting mechanism from the Council nominated Directors back to the Council.
- 3.2.2 The recommendations from this report, together again with a recommendation on how these can be adopted or are already incorporated within BCC are given in appendix 1.

3.3 Liverpool City Council – Relevant Findings from Best Value Inspection Report

- 3.3.1 LCC delivers some services through a range of Local Authority Trading Companies (LATCo's). They were not a major focus of the Best Value Inspection and the team only reviewed the two that were integral to the Inspection, Liverpool Streetscene Services Ltd (LSSL) and Liverpool Foundation Homes Ltd (LFH). The report noted similar failings at Liverpool to those identified at Nottingham and Croyden, including accumulation of LCC funded debt, reporting and lack of understanding of good company governance.
- 3.3.2 The report recommendations were far wider than group companies but within them was included the recommendation below. The elements of this are already included within appendix 1 as they echo findings and recommendations made by Grant Thornton within the PIRs to Nottingham and Croyden:
- In the first 24 months, review the roles and case for continuing with each subsidiary company of LCC. For those companies that it is agreed to continue, ensuring that the Directors appointed by LCC are appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder

agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate.

4 Options considered and Recommended Proposal

- 4.1 This report provides information to Members on recent findings by auditors in three other local authorities and invites members to consider these in relation to the arrangements within Birmingham. Group Company Governance is the remit of this Cabinet Committee and therefore the recommended action. There will be options concerning how improvements are implemented and these are for discussion and agreement with Members, officers and BCC Internal Audit.

5 Consultation

- 5.1 This report consults Members, makes recommendations and invites discussion on implementation. The implementation phase of any resulting improvements will undertake consultation with stakeholders as appropriate.

6 Risk Management

- 6.1 This report seeks to review existing governance arrangements in light of recent PIRs issued to three other local authorities. These actions and implementation of improvements and enhancements will contribute to the risk management process of the Group Company position.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The Council provides services to community through a number of different vehicles. This report provides information on the governance structure through which service delivery is being provided.

7.2 Legal Implications

- 7.2.1 The Council's Section 151 Officer has a duty to ensure the proper administration of the Council's financial affairs. The Accounts and Audit Regulations 2015, requires the Council to have effective arrangements for the management of risk.

7.3 Financial Implications

- 7.3.1 Group company governance is a vital tenet of sound group financial management. Improvements to the process and operation as a "best in class" authority in this regard will contribute to the overall reduction of financial risk for the Council
- 7.3.2 Where implementation of improvements have a financial impact then that will be considered at the decision point for that action, be it by member or officer delegation. None of the elements within Appendix 1 have a material financial impact.

7.4 Procurement Implications

- 7.4.1 There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- 7.5.1 There are no direct human resources implications arising from this report.

7.6 Public Sector Equality Duty

- 7.6.1 There are no equality duty or equality analysis issues relating to the proposals set out in this report.

8 Appendices

- 8.1 Appendix 1 – BCC Review of Public Interest Report recommendations
8.2 copy of 25 May 2021 CIPFA Article by Joanne Pitt: The need for guidance about council-owned companies

9 Background Documents

See Appendix 2

Appendix 1

Group Company Governance Committee – Recommendations made to Nottingham City Council and Croyden LBC within Public Interest Reports

Grant Thornton Recommendation for Nottingham City Council	Process assessment for BCC	Proposed Action
R1. Using the current Strategic Review and other appropriate advice to assist with decision-making, the Council should urgently determine the future of RHE, with options properly evaluated and risks properly assessed. This assessment should also take into account the context of the Council's current financial position.	BCC should consider the strategic fit of its group companies taking into account the context of the City Plan, Delivery Plan and the MTFP	Through Company analysis and company "sponsor" report to GCG
R2. 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.	Retain the recommendation in full for consideration at Annual Appointments confirmation and when new appointments/changes occur	Within company analysis identify recommended board representation – members, officers, external experts. Review and compliance report to GCG
R3. 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.	BCC appointees to boards as directors and observers should demonstrate the knowledge, experience and strength to challenge. All appointees will undertake training for their role of director/observer and be given	Register of members and officer training held centrally. Recommend making training for these roles mandatory. Guidance including officer contacts available for every appointee.

	direction on Council support in their role (legal support).	
R4. 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.	See above	See above
R5 The Council should ensure that all elements of its governance structure, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals.	Company governance structure and shareholder role should be defined more clearly and communicated to the necessary individuals.	Group company guidance on intranet is reviewed and updated. Incorporate individual clarification as part of training. Provide updates to appointees.
R6. When allocating roles on Council-owned organisations to individual councillors, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them.	Ensure no conflicts of interest in Councillor roles in BCC and through activity with Group Company boards.	Review annual declarations of Col for inclusion of directorships and observer roles for members and officers.
R7. The Council should ensure that risks relating to its companies are considered for inclusion in its overall risk management processes, with appropriate escalation and reporting, rather than being seen in isolation.	The client within BCC and their team should maintain a full risk register.	Under advice from Head of Audit, create separate BCC Group Risk Register as separate document to be reported to CCGCG
R8. As the new arrangements for monitoring companies are rolled out alongside the Companies Governance Sub-Committee, the Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Sub-Committee and others involved in holding the companies to account, and that robust action, with	Business plans for material group entities are presented to CCGCG but regular financial reports are not presented during the year. Financial impact for the council is reported through standard monitoring process.	Annual report is provided at outturn. Consider more frequent financial report format for CCGCG – frequency of reporting – potential to incorporate statement in Company

the oversight of the s151 officer, is taken if suitable information is not provided.		updates on finances (verified internally)
R9 Within the new arrangements involving the Companies Governance Sub-committee, the Council needs to ensure that responsibilities for scrutiny and risk management are given sufficient prominence, including giving the Audit Committee explicit responsibility for scrutiny of governance and risk management across the group.	This role is held by CCGCG	Consider whether there is a role for Audit Committee – is it assurance from CCGCG?
R10. In addition to those referred to in recommendations above, the Council should apply the lessons from RHE in a further review of its company governance arrangements, in particular to ensure that risks are appropriately flagged and managed, as well as successfully implementing the more robust monitoring agreed by the Companies Governance Executive Sub-Committee.	N/A	N/A
R11. 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.	To consider further in conjunction with Legal Services	
R12. The Council should use the experience of owning RHE to consider whether there are any lessons for its wider governance, particularly in relation to the 'checks and balances' which need to be in place, including the need for a stronger monitoring and scrutiny function and moving to a culture in which challenge of political priorities and how they are being implemented is seen as a positive.	N/A	N/A

R13. The Council should ensure that it reflects the financial pressures arising from RHE alongside those from covid-19, demand-led services and other areas to produce balanced and achievable financial plans for the current year and for the medium-term, without disproportionate, unsustainable reliance on one-off measures.	N/A	N/A
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London Borough of Croydon

Grant Thornton Recommendation for Croydon LBC	Process assessment for BCC	Proposed Action
R17. The Cabinet and Council should reconsider the financial business case for continuing to invest in Brick by Brick before agreeing any further borrowing.	Within BCC company investments follow standard decision governance – additionally where appropriate reports are taken to CCGCG.	Consider formalising process for reporting financial company transactions to CCGCG – would be for note as not part of executive process, consider materiality.
R18. The Cabinet and Council should review and reconsider the ongoing financial rationale for the Council in the equity investment arrangement with Brick by Brick.	As above	As above
R19. The s151 officer and monitoring officer should monitor compliance with loan covenants with Brick by Brick and report breaches to Members.	S151 and Monitoring Officer roles are represented on the CC-GCG. Loan conditions to group entities are monitored as part of service management and through the Development & Commercial and	A review of covenants to be carried out within all group entities (outside of commercial loan portfolio – covenants monitored externally) to note and

	Legal teams within Council Management.	confirm to CC-GCG that robust and complete arrangements are in place.
R20. The Cabinet and Council should review the arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded.	Covered in part within recommendations relating the RHE above – strategic fit for Council.	

APPENDIX 2

Group Company Governance Committee - Governance Review – CIPFA Article on Local Authority Companies

Joanne Pitt: The need for guidance about council-owned companies

25 MAY 2021 BY [JOANNE PITT](#)

Recent public interest reports have shown how failures around council-owned companies can have devastating consequences, writes the local government policy manager at the Chartered Institute of Public Finance & Accountancy.



The conversation about the financial sustainability of local authorities has been going on for years. To support the financial health of the sector, Cipfa has committed to producing an index of indicators that could suggest financial fragility and/or risk within authorities.

However, the local government sector is complex. Through our resilience index, we have always been clear that a single component of a council's balance sheet cannot be used in isolation to reach a conclusion about the organisation's overall financial health. However, scrutinising council finances by shining a light on individual areas of risk based on emerging trends can provide a helpful contextual understanding at the local level. It can also help identify non-financial areas of weakness that may have an indirect impact on public finances.

More recently, we have seen that council-owned companies can present increased risk to local authorities, particularly where there is a weakness in governance and scrutiny. In 2020, two high-profile public interest reports, specific to [Nottingham City Council](#) and [Croydon](#) LBC, illustrated how

failures to understand the dangers of these company arrangements could resonate throughout the council, with potentially devastating consequences for local communities.

These two reports, together with evidence from recent organisational reviews, show some common themes and issues among councils that hold portfolios of companies. The potential for issues can generally be linked to organisational governance, leadership, capacity, financial stability, and culture, including:

- **a lack of understanding of roles and responsibilities**
- **a lack of skills around commercial decision making**
- **an optimism bias that does not reflect the true position**
- **a lack of strategic rationale surrounding the creation of companies**
- **a reluctance to listen to challenges.**

These reports, along with research and stakeholder commentary like the government's [best value inspection report](#) into Liverpool City Council, provide a unique opportunity for the sector to learn from the experience of others. At Cipfa, we agree with the findings from Grant Thornton's [lessons from recent public interest reports](#) "that it is often a question of degree, and perhaps a matter of timing, that separate these from a wider pool of councils".

Building on the success of the 2019 financial management code, Cipfa plans to extend its financial sustainability work by developing additional guidance for our members on council-owned companies. While the work will be aimed at public finance professionals, Cipfa is committed to building on the idea that responsibility for corporate financial sustainability rests with those responsible for making executive decisions with the support of their professional advisers. While this future work will be guidance rather than a formal code, it will provide much needed support and assurance to those involved in the operation of council-owned companies. The guidance will be released in the autumn.

Companies can certainly be a force for good in much of the public sector. At Cipfa we recognise that some local authorities have had, and continue to have, successful council-owned companies. We will continue to encourage learning from the best examples of public-private relationships the sector has to offer.

Joanne Pitt, local government policy manager, Cipfa

Public Report

Birmingham City Council

Report to Cabinet Committee – Group
Company Governance

15 July 2021



Subject: Cabinet Report – PropCo Ltd - Consultation

Report of: Assistant Director Inclusive Growth

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O &S Chair(s): Councillor Mohammed Aikhlaq

Report author: Simon Garrad, Project Delivery Manager, Inclusive Growth

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

- Executive Summary**

- 1.1 This report presents the draft report to Cabinet of the Interim Director Inclusive Growth programmed for 27th July 2021 and appended on the private agenda. The draft report is on the private agenda as it is not yet in its cleared final form and as such will not be made public until circulated in advance of Cabinet on 19th July 2021.
- 1.2 The Cabinet report details a proposal to utilise the Council's existing wholly owned company, Birmingham City Propco Limited (Propco), to support the Council's Property Strategy 2018/19-23. The decision will cover investment in Propco and a review and strengthening of the company's internal structure and governance to reflect the proposed changes.

2 Recommendations

- 2.1 Members are asked to note the information provided within the exempt appendix 1 and set out any comments as part of the consultation process for addressing by the authors prior to the submission to Cabinet for decision.
- 2.2 Note in particular the draft recommendation 2.5 which gives a role to the Cabinet Committee Group Company Governance (CC-GCG) as consultees in the approval of the terms and details of the revised restructure of PropCo governance.
- 2.3 Members are asked to note that in this regard any conclusions or comments should be limited to the company structure and governance and not the wider subject matter for which the changes to the company is proposed.

3 Background

- 3.1 CC-GCG have a remit to consider the governance arrangements in place across the council's group interests, included a gateway role for creation of new companies. The draft cabinet report in question does not create a new company but makes material changes to an existing company, including a requirement to confirm to members that a robust governance environment will remain in place after company structure changes. In this material amendment, CC-GCG have a role as consultees and will continue to review and challenge PropCo with regard to strategic fit, business plans and performance.
- 3.2 Cabinet will receive the report "Property Strategy: Asset Review - Birmingham City PropCo Limited (Prop Co)" at its meeting on 27th July 2021. That report is provided at appendix 1 in draft form. CC-GCG have been designated a formal consultation role within the draft under recommendation 2.5, below:
 - Delegates the approval of the terms and details of the revised restructure of Propco governance to the designated shareholder representatives, these being the Chief Executive and Section 151 officer; in consultation with the Council's shareholder representative Group Company Governance Committee.

4 Options considered and Recommended Proposal

- 4.1 This report provides information to Members on the changes to an existing company and the committee's role in the approval of the governance process. The views of the Committee will be noted on the report to full Cabinet.

5 Consultation

- 5.1 This report forms part of the consultation to the Cabinet report in question.

6 Risk Management

- 6.1 Should the proposed changes to PropCo subsequently be approved by Cabinet then as part of the Council's group structure Cabinet Committee Group Company Governance will continue to discharge its oversight of this company in the same way as for other group companies.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The Council provides services to community through a number of different vehicles. This report provides information on revisions to an existing entity through which service delivery is being provided.

7.2 Legal Implications

The Council's Section 151 Officer has a duty to ensure the proper administration of the Council's financial affairs. The Accounts and Audit Regulations 2015, requires the Council to have effective arrangements for the management of risk.

7.3 Financial Implications

- 7.3.1 The decision to make amendments to the company and the service delivery risks associated with that decision will be considered by full Cabinet.
- 7.3.2 The actual direct costs of the amendments are detailed in exempt Appendix 1, however the corporate risks and financial implications created by the operation of a company can be significant if the company is not set up and managed appropriately.
- 7.3.3 Legal, tax and financial advisors are engaged in the amendments to the company, should Cabinet approved the strategic changes.

7.4 Procurement Implications

There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

There are no human resources implications directly arising from the full cabinet decision.

7.6 Public Sector Equality Duty

There are no equality duty or equality analysis issues relating to the proposals set out in this report.

8 Background Documents

See Exempt Appendix 1

