

**REPORT OF CLLR GIRLING, CABINET MEMBER FOR ECONOMIC  
DEVELOPMENT AND ASSET MANAGEMENT**

**GOVERNANCE RESTRUCTURE OF SCAPE GROUP LIMITED AND  
APPOINTMENT OF THE COUNCIL'S REPRESENTATIVE TO THE  
SHAREHOLDER OVERSIGHT BOARD OF SCAPE GROUP LIMITED.**

**Purpose of the Report**

1. This report sets out the proposed governance restructure of Scape Group Limited, which the Council is requested to endorse. In addition, the report sets out the process for appointing the Council's representative to the Shareholder Oversight Board of Scape Group Limited.

**Information**

Background

2. The Council is one of the six (6) shareholders of Scape Group Limited (Scape) namely:

- (1) Nottinghamshire County Council
- (2) Nottingham City Council
- (3) Warwickshire County Council
- (4) Derbyshire County Council
- (5) Derby City Council
- (6) Gateshead Council

3. Scape is proposing a governance restructure which all members are requested to sign up to. The governance restructure requires the approval of all the shareholders pursuant to the agreed procedure outlined in the shareholders' agreement already in place. The governance restructure includes the revision of the following governance documents:

*a. Appointment Protocol*

The Appointment Protocol sets out the considerations to be taken into account by each Shareholder and the Board of Directors when appointing a Director under Article 16 of the Articles of Association and the process for doing so. It also specifies the principles that guide appointments to the Board of Directors. The Council obtained legal advice from Sharpe Pritchard solicitors on this item specifically, resulting in the Council requesting that the Appointment Protocol is followed for all directors appointed (not just those appointed by the Shareholders). The documents have been amended to reflect this request.

*b. Articles of Association*

A minor amendment has been made to the Articles that each non-executive Director appointed shall be required to resign on the fourth anniversary following the date of their appointment.

c. *Shareholder Agreement*

Minor changes have been made to the Shareholder Agreement as follows:

- I. Appointment of Directors by either the Shareholders or the Board of Directors shall be in line with the Appointment Protocol.
- II. Any Director appointed to the Board shall be different to the person appointed to the Shareholder Oversight Board (SOB Representative).
- III. Further detail around the process for appointments of alternate directors, including appointment of an alternative Director to replace any Director who has ceased to hold office.
- IV. A change of terminology from a “Shareholder Steering Group” to a ‘Shareholder Oversight Board’, comprising representatives from member Councils, to represent them as shareholders. Further details on this are below.

d. *Shareholder Oversight Board Protocol.*

This is the revised name for the existing Shareholder Steering Group. It is a body that will be made up of representatives of the Shareholders and its purpose is to facilitate and enhance involvement of the Shareholders with a view to consultation between the Shareholder Oversight Board and the Directors with representatives from the member Council to represent them as shareholders.

4. The Shareholder Agreement between the shareholders and Scape requires that a Shareholder Oversight Board (SOB) be set up. Clause 6.1(i) of the Shareholder Agreement states that:

*“The Company and the Shareholders shall establish a Shareholder Oversight Board (SOB) and the terms of reference and other matters relating to the governance of the SOB shall be determined by the SOB Protocol. In summary, the purpose of the SOB is to facilitate and enhance the involvement of the Shareholders in respect of the Company’s business plans and strategic objectives through the SOB with a view to consultation and liaison between the SOB and the Directors.”*

- a. Each shareholder is required to appoint a representative (“SOB Representative”) to represent it on the SOB. Hence this report sets out the details of this requirement and the process by which the Council will make the appointment.
- b. The role of the SOB is very crucial to the successful operation of Scape’s business. The SOB shall consult and liaise with Scape’s Board of Directors in relation to all matters pertaining to the running of the business and the conduct of Scape’s activities:

- a. establish and maintain appropriate and effective corporate governance foundations which govern the Shareholders' SOB Representatives' and the Scape's relationship.
  - b. promote effective objectives, business planning and performance against the Business Plan.
  - c. promote the organisational capability of Scape to deliver against its Business Plan.
  - d. promote effective leadership (high quality boards and senior management).
  - e. promote effective relationships between the Shareholders, SOB Representatives and Scape.
  - f. give its consent in writing of a majority in number of the SOB Representatives for any re-appointment of a Director of Scape.
- c. The SOB Protocol sets out how the SOB will be constituted, how it will operate, factors to be taken into consideration, and the process for each Shareholder to nominate its representative on the SOB. In accordance with the SOB Protocol, all nominations of SOB Representatives shall be made in accordance with the following principles:
- a. Each Shareholder shall appoint a suitable person from amongst their organisation to represent them and undertake to exercise all rights and obligations of that Shareholder under the Shareholders' Agreement and to serve on the SOB.
  - b. In making their appointment, the Shareholders shall consider the nature and purpose of Scape's activities and seek to appoint a willing, suitably qualified, and experienced person with an appropriate background and interest in Scape's activities (or similar activities to those of Scape).
  - c. Shareholders shall ensure that their respective SOB Representatives are fully acquainted with all matters and are in receipt of all relevant knowledge and information in relation to the business and affairs of Scape to participate fully in the workings of the SOB.
  - d. The Shareholders shall ensure that their respective SOB Representatives are fully authorised to act on their behalf in all matters relating to the exercise of their rights under the Shareholders' Agreement.
  - e. The SOB Representative's appointment shall last for a period of 4 years (or such lesser period as the Shareholder shall decide), but with the option of further extensions.
  - f. If the SOB Representative leaves their post prematurely, the relevant Shareholder shall appoint a replacement within 14 days of their departure.
  - g. The name and contact details of the SOB Representative (or any replacement) shall be notified to Scape's Company Secretary within 14 days of their appointment.

- h. The SOB Representative shall be responsible for discharging the responsibilities of the Shareholder and will seek regular input from the Shareholder.
- i. Ideally, the SOB Representative nominated by a Shareholder should be an elected Council member, to facilitate a demarcation between (a) the possible wider interests of each individual Shareholder and (b) the more specific legal duties of the statutory director appointed by that Shareholder to act in such a way as to promote the success of the Company.

## **5. Appointing the Council's representative on the Shareholder Oversight Board**

- a. The Council should carefully consider the individual it appoints as they will hold the full authorisation to act on behalf of the Council as one of Scape's shareholders.
- b. Although, under the Council's internal governance, the Council's appointed SOB representative will exercise their authority on behalf of the Council subject to due internal consultation, consideration and approval, it is vital that in appointing the individual, the Council considers the significant degree of authority the SOB representative will exercise on its behalf. The individual will, subject to prior approval from the relevant body of Council, undertake to exercise all rights and obligations of the Council and will therefore be the sole individual for discharging the consents, permissions and other responsibilities required from the Council in relation to Scape.
- c. For the reasons set out in paragraphs 5.1 and 5.2 above, it is recommended that the Council's SOB Representative should be an elected Council member. As set out in the SOB Protocol (see paragraph 4(3)(i) above), having an elected Council member as the Council's SOB Representative will "*facilitate a demarcation between (a) the possible wider interests of each individual Shareholder and (b) the more specific legal duties of the statutory director appointed by that Shareholder to act in such a way as to promote the success of the Company*".

## **Other Options Considered**

- 6. None – the Council's agreement to the proposed changes is required in order for them to occur and the representatives appointed will be the most appropriate to act on behalf of the Council.

## **Reason/s for Recommendation/s**

- 7. A sound and up to date Governance structure of Scape is vital for the effective operation of the activities of the company. To have a voice as shareholder, the Council needs to appoint a representative to act on its behalf on the Shareholder Oversight Board.
- 8. The revised Governance Structure of Scape is vital to the proper running of the company. The Governance arrangements requires that all six shareholders set up a Shareholder

Oversight Board and appoint a SOB Representative from each authority acting on behalf of that authority. It is in the interest of the Council to appoint a SOB Representative to the SOB.

### **Statutory and Policy Implications**

9. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Where appropriate consultation has been undertaken and advice sought on these issues as required.

### **Consultation**

10. Given the significance of the proposed governance changes and the significance of the role of the Council's SOB Representative, it is advisable that consultation on this report is undertaken with the Leader of the Council, the Cabinet Member for Business Management the Cabinet Member for Economic Development and Asset Management, the Service Director for Green Growth, Investment and Assets, as well as the Board of Directors of Scape.

### **Public Sector Equality Duty implications**

11. The Council must have regards to its duties under the Equality Act 2010 when reaching decisions. No impacts on people with protected characteristics are identified in connection with this matter.

## **RECOMMENDATION/S**

It is recommended that the Cabinet:

- a. Supports the proposed Appointment Protocol, SOB Protocol and the amendments to the Articles of Association and Shareholder Agreement as summarised in the report.
- b. Authorises officers to sign the Deed of Amendment and Restatement of the Shareholder Agreement.
- c. Authorises officers to sign the Written Resolution to amend the Articles of Association of Scape,
- d. Appoints a representative to act on behalf of the Council on the Shareholder Oversight Board of Scape, including voting on behalf of the Council as shareholder, subject to the appointed representative taking both legal and financial advice and obtaining prior approval, where appropriate, from the relevant body of Council on matters which the advice indicates are likely to be significant which are to be voted on by the Shareholder Oversight Board.

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### **Constitutional Comments (KA 26/01/2024)**

12. The recommended decisions are within the overall remit of the Cabinet. Whilst the Cabinet Member for Business Management has authority under the Council's constitution to appoint representatives to outside bodies, the Cabinet, on behalf of the Council as shareholder, has the authority to make decisions in relation to the Council's role as a shareholder of Scape.

### **Financial Comments (GB 01/02/2024)**

13. There are no financial implications arising directly from this report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Scape Group Limited - Re-enacted Shareholder Agreement.

### **Electoral Division(s) and Member(s) Affected**

- 'All'

