Cheltenham Borough Council

Cabinet – 7 March 2017

Nominations to Outside Bodies – Non-executive director for Publica

Accountable member	**Leader, Councillor Steve Jordan**
Accountable officer	**Head of Paid Service, Pat Pratley**
Accountable scrutiny committee	**O&S**
Ward(s) affected	**All**
Key Decision	**No**
Executive summary	Following each Selection Council, and at other times when vacancies arise, the Leader/Cabinet takes the opportunity to nominate and, in limited cases, appoint persons to various roles within bodies external to the Council. In October 2016 Council approved the transfer of GO Shared Services (Finance, HR, ICT, Procurement) and ICT functions to a local authority company owned by Cheltenham Borough Council, Cotswold District Council, Forest of Dean District Council and West Oxfordshire District Council. It was proposed that the company structure would comprise 3 companies each with its own distinct focus; i.e. business support services, co-ordinating company (commissioning) and regulatory services. The Council appointed the Leader of the Council as the Council's representative on the business support service's company who will be responsible for taking member decisions on behalf of the Council. As a member of that company the council will also be seeking to nominate a Councillor to be a non-executive director. The services that will be delivered from the company will be Finance, HR, ICT,and Procurement. With regard to the new company name, Publica, following an informal meeting of the 2020 Partners Joint Committee members it was agreed that the new companies will be named Publica and the term Publica Group will be used to describe all of the companies. The use of the name will be primarily for registering the companies and for internal purposes. It will not replace any partner Council branding.
Recommendations	**1. To nominate Councillor Wendy Flynn for appointment as a non-executive director of Publica as set out in the terms of appointment in Appendix 2 and in accordance with the**

following principles:

- **all nominations are made on the basis that the nominee/appointee is a representative of Cheltenham Borough Council (insofar as that is compatible with any overriding legal duty to an outside body); and**
- **the appointor reserves the right at any time to withdraw/terminate a nomination/appointment which it has made**
- **a nomination/appointment to an outside body is referred to Council for determination where consensus on that nomination/appointment cannot be achieved between the political Group Leaders**
- **the appointment is subject to the necessary due diligence checks being successfully completed.**

Financial implications	There is no remuneration for the non-executive Directors appointed to the Board of Publica. There are therefore no financial implications arising from this report. **Contact officer: Sarah Didcote** **E-mail: sarah.didcote@cheltenham.gov.uk** **Tel no: 01242 264125**
Legal implications	See body of the report. Two general powers are relevant to nomination/appointment to outside bodies, these being the general power of competence found in the Localism Act 2011 and the power of an authority to do anything conducive, incidental to or facilitative of the discharge of any of their functions found in the Local Government Act 1972. **Contact officer: Shirin Wotherspoon** **E-mail: shirin.wotherspoon@tewkesbury.gov.uk** **Head of Law (commercial)** **Tel no: 01684 272017**
HR implications (including learning and organisational development)	As outlined in the body of the report. **Contact officer: Julie McCarthy , Strategic HR Manager julie.mccarthy@cheltenham.gov.uk, 01242 26 4355**
Key risks	Members appointed should be aware of their roles and responsibilities.

Corporate and community plan Implications	Approval of the recommendations will deliver the corporate plan objective for 2016/17 VFM1 - we will work with 2020 partners to implement agreed shared services from April 2016 and specifically deliver the milestone-to consider a business case for a local authority company governance model and its subsequent delivery.
Environmental and climate change implications	None

1. General background relating to the appointment of outside bodies

1.1 The outside bodies to which nominations/appointments are made comprise a variety of organisations and groups. A traditional distinction can be drawn between incorporated and *unincorporated* bodies; the former being distinct legal entities such as companies, having a legal personality and a framework imposing obligations upon those who become involved by appointment; the latter being bodies which, albeit without formal legal foundation, play an important role in representing interests within the local community. Involvement in these unincorporated organisations will often carry few or no legal obligations on those appointed.

1.2 In the majority of cases Cheltenham Borough Council decides who to nominate to the outside body concerned and it is then for that body to decide on whether to accept the nomination and make the appointment. There are some limited exceptions to this, such as Cheltenham Borough Homes Gloucestershire Airport and the Cheltenham Trust where the Council is entitled to make the appointments to the boards of directors.

2. Legal issues

2.1 With regard to outside bodies whilst nominations/appointments are made on the general basis that the nominee/appointee is the Council's representative on the outside body, it is important to note that in many cases the overriding duty is to the outside body. For example, a company director has a primary duty of care towards the company and to act in the best interests of the company as a whole and a trustee must act in accordance with the trust deed and uphold the trust's objectives.

2.2 The Council is able to indemnify members (and officers) in the course of their activities on outside bodies provided they are acting within the scope of their authority as Council representatives. Outside bodies, such as companies, that are legal entities in their own right must have their own appropriate insurance arrangements in place. It is important that members (and officers) clarify the position in each particular case.

2.3 Under the council's Constitution, the Leader (or Cabinet if so referred by the Leader) has the power to make appointments to outside bodies where they relate to an executive function provided there is Group Leader agreement to the appointments. If there is no consensus, then the nomination/appointment is referred to Council for approval.

3. Nomination/appointment of external persons

3.1 Historically Cheltenham Borough Council has nominated/appointed external persons to some outside bodies. On 29th June 2006 Council specifically agreed that 'All nominees are elected Members of Cheltenham Borough Council unless there are exceptional reasons justifying the appointment of a non- Member'. Relevant examples of outside bodies to whom external persons have been appointed are; Gloucestershire Airport, Pate's Grammar School Foundation. The reasons for these appointments have been the specialist knowledge skills and experience that have been brought to the outside body and/or the lack of Member nomination to that body.

3.2 External persons are not, of course, subject to the Code of Members' Conduct nor are they under any general obligation to act in the best interests of the Council or the broader public interest. Also, they are not covered by the Council's insurance. Whilst these factors do not prevent the nomination of external persons they should be borne in mind when considering whether to make such nominations/appointments.

4. The appointment process for Non-Executive directors of Publica

4.1 The report to Council in October 2016 made reference to the appointment process. Each member

council would have the right to appoint a suitable non-executive director of the company. This right could be exercised individually or collectively by other partner councils i.e two or more member councils may agree to the appointment of the same non-executive director. However it was agreed that CBC would appoint a single non-executive director on its behalf who was expected to be an elected Member of this Council.

4.2 It should be noted that the other three councils in the 2020 vision partnership, namely Cotswold District Council, Forest of Dean District Council and West Oxfordshire District Council will be following a different process to Cheltenham. The GOSS HR team are working in partnership with an external consultant to support the partnership with the selection and appointment process for non-executive directors.

4.3 Candidates for the roles of non-executive directors referred to in 4.2 would be subject to formal terms of appointment and be subject to a rigorous process to ensure that they meet minimum levels of skills and experience required to undertake the roles. This due diligence process is to be carried out with the support of external consultants.

4.4 CBC is entitled to appoint who they choose to be their non-Executive Director to Publica but will be subject to some basic due diligence checks before the formal appointment can be made.

4.5 The terms of appointment for the Non-Executive Directors as set out in Appendix 2 was circulated to Group Leaders in CBC on 30 January 2017 with a request for nominations by close of play on Tuesday 7 February 2017. The short timescales were due to the terms of appointment only being made available at the beginning of February and to allow time for the due diligence checks to be carried out.

4.6 Councillor Wendy Flynn was nominated by the Liberal Democrat Group and Councillor Matt Babbage by the Conservative group and the PAB group had no nominations. As there were two nominations for one position after further consultation with the Group Leaders, Councillor Matt Babbage decided to withdraw from the process. However he wished it noted that he would be interested in the future if the vacancy occurred again. Councillor Wendy Flynn completed the due diligence form which were sent to officers in the 2020 partnership and as at the time of writing this report the final checks are still being completed..

5. Remuneration

5.1 There is no remuneration for the non-executive Directors on the board. The CBC Member will be able to claim travel expenses under the CBC Members' Allowance Scheme in attending meetings of the Board if there is no provision for the payment of these expenses by Publica. Other expenses associated with the role such as attending training arranged for board members would be the responsibility of Publica.

6. Reasons for recommendations

6.1 It is in the interests of the council to ensure representation on the board of Publica.

7. Alternative options considered

7.1 It was this Council's preference that the council's representative on the Publica board should be an elected Member of this Council.

8. Consultation and feedback

8.1 Set out in paragraph 4.5

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Appendices	1. Risk Assessment 2. Publica Group – Terms of appointment for non-executive directors.
Background information	1. Constitution Part 5G

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likeli-hood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If elected members are not aware of their roles and responsibilities they may compromise their position	PP	1 February 2017	3	2	6	Control	Ensure members are aware of guidance set out in Constitution Ensure members understand their role on the outside body and have a copy of relevant constitution or terms of reference of the body concerned		Pat Pratley	
	If NEDs do not understand their role on Publica and its constitution they may compromise their position or not carry out their role effectively.	MD of Publica	16 February 2017	3	2	6	Reduce	Ensure members understand their role as non exec director and have a copy of relevant constitution or terms of reference of Publica		David Neudegg	

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close