



Agenda

- Notice of a public meeting of:** Shareholder Committee
- To:** Councillors Carl Les (Chair), Gareth Dadd and Don Mackenzie.
- Date:** Tuesday, 25th May, 2021
- Time:** 1.00 pm
- Venue:** Remote Meeting via Microsoft Teams

This meeting will be held using video conferencing with a live broadcast to the Council's YouTube site. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 lapsed as of 7 May 2021. Any formal decisions that the Committee needs to make that are legally binding will be made by the Chief Executive Officer using his emergency delegated powers, taking into account the recommendations of the Committee.

The meeting will be available to view once the meeting commences, via the following link - www.northyorks.gov.uk/livemeetings. Recordings of previous live broadcast meetings are also available there.

Business

1. Minutes of the meeting held on 29 September 2020 (Pages 3 - 6)
2. Declarations of interest
3. Exclusion of the public from the meeting during consideration of Appendix C to Agenda item 5, on the grounds that it will involve the likely disclosure of exempt information as defined in the paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to information)(Variation) Order 2006:-
4. **Public Questions & Statements**
Members of the public may ask questions or make statements at this meeting if they have given notice to Melanie Carr of Democratic and Scrutiny Services and supplied the text (*contact details below*) by midday on Thursday 20 May 2021, three working days before the day of the meeting. Each speaker should limit themselves to 3 minutes on any item. Members of the public who have given notice will be invited to speak:-
 - at this point in the meeting if their questions/statements relate to matters which are not otherwise on the Agenda (subject to an overall time limit of 30 minutes);
 - when the relevant Agenda item is being considered if they wish to speak on a matter which is on the Agenda for this meeting.

If you are exercising your right to speak at this meeting, but do not wish to be recorded, please inform the Chairman who will instruct anyone who may be taking a recording to cease while you speak.

5. Brierley Group Annual Report 2020/21 & Brierley Group Business Plans (Pages 7 - 164)

Recommendations: The Shareholder Committee is asked to:

- i) note the Annual Report and Brierley Group Business Plan summary 2021-2023 at Appendices A & B respectively;
- ii) recommend to the Chief Executive that under his emergency delegated powers he accept and approve the Business Plans in Confidential Appendix C.

6. Align Property Partners - Articles of Association (Pages 165 - 200)

Recommendation: The Shareholder Committee is asked to recommend to the Chief Executive that under his emergency delegated powers he:

- (i) Approve the Articles of Association for Align Property Partners Limited; and
- (ii) Sign off the Written Resolution on behalf of the shareholder

7. NYnet Ltd - Articles of Association (Pages 201 - 218)

Recommendation: The Shareholder Committee is asked to recommend to the Chief Executive that under his emergency delegated powers he:

- (i) Approve the Articles of Association for NYnet Limited; and
- (ii) Agree the Written Resolution be signed by the Corporate Director of Strategic Resources on behalf of the Council as shareholder.

8. Work Programme (Pages 219 - 220)

Purpose of the Report: To consider and develop the Work Programme for the Shareholder Committee

9. Other business which the Chair agrees should be considered as a because of special circumstances

Contact Details

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Barry Khan
Assistant Chief Executive
(Legal and Democratic Services)

County Hall
Northallerton

Monday, 17 May 2021

North Yorkshire County Council

Shareholder Committee

Public Minutes of the meeting held on 29 September 2020 commencing at 9am, at County Hall, Northallerton.

Present:-

Members:

County Councillors Carl Les (Chairman), Gareth Dadd and Don Mackenzie

Officers:

Richard Flinton (Chief Executive); Barry Khan (Assistant Chief Executive (Legal & Democratic Services); Gary Fielding (Corporate Director Strategic Resources); Michael Leah (Assistant Director, Strategic Resources) and Melanie Carr (Principal Democratic Services Officer)

Also in Attendance: County Councillors Derek Bastiman, Richard Musgrave & Annabel Wilkinson

Copies of all documents considered are in the Minute Book

45. Minutes

Resolved -

That the Minutes of the meeting held on 21 January 2020, having been printed and circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

46. Declarations of Interest

In regards to Agenda Item 4, County Councillor Gareth Dadd as a Director of the Veritau, declared a non-pecuniary interest in matters relating to the Company. In addition, County Councillors Carl Les and Don Mackenzie as Directors of NYNet, declared a non-pecuniary interest in matters relating to the Company.

47. Public Questions or Statements

There were no questions or statements from the public.

48. Quarter 4 2019/20 Brierley Group Report & Summary Brierley Group Business Plans for 2020/23

Members considered the report of the Assistant Director for Strategic Resources, providing a Quarter Four financial and performance update for 2019/20 for the companies that make up the Brierley Group.

Michael Leah, Assistant Director for Strategic Resources introduced the report, providing an overview of performance and highlighting fourth quarter achievements and challenges for the individual companies. He confirmed the mixed position for the companies at end of the last financial year, a number having performed broadly well but NYES, Yorwaste and SJB having had some disturbance in their performance, in small part due to COVID.

In response, County Councillor Don Mackenzie was pleased to note the progress of NYNet but expressed disappointment at the progress of others, recognising their planned contribution to the County Council's general fund would be subsequently less than expected.

County Councillor Gareth Dadd agreed and suggested that due to the challenges and opportunities going forward, expectations would need to be tempered in the short to medium term.

County Councillor Carl Les confirmed he had received a query from County Councillor Geoff Webber, regarding the performance of Brierley Homes, and in response had directed him to the report for this meeting.

Members agreed to go into private session to consider the confidential summary of the Brierley Group's Business Plans provided.

Having considered all of the information provided, Members thanked officers for the update, and it was

Resolved:

That the Quarter 4 Performance Report and the confidential summary of the Brierley Group Business Plans for 2020-23 be noted.

49. Articles of Association for NY Highways Ltd

Members considered the report of the Assistant Chief Executive (Legal & Democratic Services) seeking shareholder approval for the Articles of Association for North Yorkshire Highways Ltd.

Barry Khan, Assistant Chief Executive (Legal & Democratic Services) introduced the report, which provided the background to the creation of NY Highways Ltd. He also drew attention to some changes to the existing Articles of Association for NY Highways Ltd to ensure compliance with the Teckal arrangements, which enable the Local Authority to give work to its companies without carrying out an external procurement exercise.

It was noted that those changes would ensure Members could exert sufficient control over the Company, and treat it like an internal department of the Council.

County Councillor Don Mackenzie welcomed the start of operations for NY Highways Ltd, recognising it would be an asset to the Brierley Group.

Resolved: That:

- i) The Articles of Association for North Yorkshire Highways Ltd be approved,
- ii) The Written Resolution be signed by the Chief Executive on behalf of the shareholder.

50. Work Programme

Members considered and endorsed the Work Programme for the Committee, for the remainder of 2020/21.

The meeting concluded at 9:35am

MLC

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North Yorkshire County Council

Shareholder Committee

25 May 2021

Brierley Group Annual Report and Brierley Group Business Plan

Appendix C of this report contain information of the type defined in paragraph 3 of Part 1 of Schedule 12A Local Government Act 1972 as amended by the Local Government (Access to information) (Variation) Order 2006.

Report of the Assistant Director Strategic Resources

1.0 Purpose of the Report

1.1 For the Shareholder Committee's consideration, this report presents:

- Brierley Group annual report 2020-21 – Appendix A
- Brierley Group Business Plan summary 2021–2024 – Appendix B
- Brierley Group business plans – Confidential Appendix C
 1. NYES
 2. NYnet
 3. First North Law
 4. Brierley Homes
 5. Align Property Partners
 6. Yorwaste
 7. Veritau
 8. NY Highways

1.2 The Business Plans attached as Appendix C to this report, articulate the aspiration of the companies listed above, to continue to increase their financial turnover, net margin and geographical reach, whilst always considering their prime purpose to return margin to its shareholder North Yorkshire County Council.

1.3 Following on from the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (“the 2020 Regulations”), which allowed for committee meetings to be held remotely, the County Council resolved at its meeting on 5 May 2021 that, for the present time, Committee business should be continued via the Chief Executive Officer making urgent decisions that would previously have been made by the Council's committees. This would be done using his emergency decision making powers as stated in the Officers' Delegation Scheme, following consultation with other Officers and Members as appropriate and taking account of the Committee's views and recommendations.

3.0 Recommendations

3.1 The Shareholder Committee is asked to note:

- i) the Brierley Group annual report in Appendix A.
- ii) the Brierley Group Business Plan summary 2021-2023 in Appendix B.

3.2 In addition, the Shareholder Committee is asked to recommend to the Chief Executive that under his emergency delegated powers he accept and approve the Business Plans in Confidential Appendix C.

MICHAEL LEAH
Assistant Director
Travel, Environmental and Countryside Services

12 May 2021

Shareholders Committee

Brierley Group Financial Update

2020-21: Quarter 4 and Future Outlook

Brierley Group Headlines

The performance of the Brierley Group through the 2020/21 financial year has continued in a similar way to 2019/20 with a mixed performance across the Group and the added complication of the Covid-19 pandemic. Based on provisional figures, the overall Group delivered an actual loss after tax for the 2020/21 financial year of £639k against a Budgeted loss of £99k. This represents an adverse variance of £539k for the Brierley Group as a whole.

Total revenue generated of £59.9m was under Budget by £4.8m. This reduction to revenue was partially offset by a reduction in the associated cost of sales, where expenditure of £53.4m delivered a £3.4m favourable variance against budget and this resulted in an adverse overall variance for the year. The main factors driving this performance are set out in the paragraphs below with further details of the specific implications relating to the outbreak of the Covid-19 pandemic in the subsequent section.

NYES have prioritised continuity and development of appropriate services for school leaders, who remain focused on maintaining a high level of education and supporting the well-being of students and staff. Although each service has faced unique challenges throughout the year, the pandemic has mostly had an adverse impact on the catering function who experienced vastly reduced numbers throughout the year due to school closures followed by local pockets of isolation in autumn and the prolonged and ongoing delivery of remote learning throughout. Following school reopening in March, Government data suggests 99.9% of state funded schools remain open as at the end of April 2021. Attendance levels were at approx. 96%, whilst meal number have continued to rise with preliminary uptake at approx. 92% of budget. NYES continues to monitor Government guidance around general school reopening and engage with schools to plan operations and assist in supporting them with their key priorities.

While First North Law's trading in the first half of the year resulted in a £14k underperformance against budget, revenue streams ended 2020-21 much healthier than in previous years. The existing client base has been buoyed by improved performance and an agreement struck around monthly retainers. This arrangement will be used to offer the client base competitive rates, while also guaranteeing FNL an income stream to invest in additional services, employees and marketing to target external clients over the next 12 months. The company is well positioned to deliver improved performance during 2021/22.

NYnet experienced some challenging trading conditions throughout 2020-21, particularly with regard to new customer sales. An account manager was recruited to drive these new sales and push LFFN (Local Full Fibre Networks) into the private sector. The Company has become the largest federator of Govroam services, which improves the way it is viewed in the market place. NYnet is also progressing with the delivery of a public wifi and Internet of Things (IoT) network, with the first towns expected to go live in the next few months.

Brierley Homes financial performance was broadly in line with its Business Plan with the lack of any scheduled sales period in 2020/21 acting to deliver a negative trading performance for the year. Construction work is well advanced on both Woodfield Square and Pateley Bridge sites with practical completion forecast for late 2021 and early 2022 respectively. Construction work has also started on site at Marton-cum-Grafton with practical completion forecast for May 2022.

The Marketing launch commenced on all 3 sites, with early off plan sales secured on each of them at a level above business plan forecasts. In broader terms, markets are proving extremely resilient and demand for housing in North Yorkshire is high with confidence in sales pace and property values being adjusted upwards in business forecasting accordingly.

For Align Property Partners, a general increase in enquiries, both from NYCC and external clients, continued into Q4 with sustained profitability through the final months of the financial year. Some timing issues around NYCC projects resulted in reduced March income for that area but it is

anticipated these monies will be recovered during Q1 2021/22. Projections are for profit margins to return to historical levels of around 10% of turnover throughout the 2021/22 financial year.

Yorwaste performed well during Q4 despite trading continuing to be difficult and at times uncertain. Yorwaste achieved its contractual waste tonnages target and services have performed well with Household Waste Recycling Centres having significant footfall in Q4. Commercial trade declined from the Christmas peak but started to return in the last few weeks of Q4 finishing at around 80% of budgeted lifts. Third-party tipping was close to budget. The transition to longer operating hours, higher route densities, and reduced fleet numbers provided a significant, but not complete cost offset to sales shortfall.

The Veritau group exceeded its budgeted profit for 2020/21. While income from non-member councils was below target and additional expenditure incurred on IT and office related equipment, this was fully offset by savings in travel and other overheads. The group is to attract new clients with a number of new academy schools and trusts signing up for services during both 2020-21 and 2021-22. Ad-hoc work has also been requested by a number of other clients. Client satisfaction and retention rates remain high.

The Brierley Group continues to explore areas of synergy from which benefits of scale and shareholder value can be derived. Examples of these synergies include shared sales and marketing functions as well as non-operational overheads, where packages of support for Finance, HR, Legal and other professional services are delivered across the Group. The leveraging of the group's scale is integral to generating further efficiencies and remaining cost competitive. Following the April 2019 decision by NYCC's Executive to migrate the existing Highways operation from Ringway into a wholly owned company, work continues in order to meet the required implementation date of June 2021. The project is now in its final stages with significant work taking place to ensure appropriate systems and processes are in place for day 1 on the 1 June 2021. Staff briefings continue to take place with both existing NYCC staff and staff moving from Ringway (the existing provider of the service) to the new North Yorkshire Highways company. A company business plan has been developed which sets out a clear direction of travel for the Company. This company will sit within the Brierley Group and areas of synergy as highlighted above have already been identified for several areas of support.

Impact of Covid-19

Throughout 2020/21, the Brierley Group dealt with the emergence of Covid-19. The subsequent lockdown, the ongoing Covid-19 restrictions and changes to trading arrangements have all presented significant practical and financial challenges to the Group. While more clarity has been added around the roadmap for lifting restrictions in 2021/22, it is recognized that the constantly evolving circumstances mean the potential for further uncertainty and complexity around trading arrangements still exists.

Covid-19 continues to be present and influencing decision making in schools and organisations around the world. To meet the changing demands and challenges within the education sector, NYES has had to adapt its service delivery models in order to remain as close to the business plan as possible. Throughout the year a number of services have utilised the Coronavirus Job Retention Scheme (CJRS) to furlough and protect frontline workers. The scheme has been used extensively in the Catering service throughout school closures and reduced periods of activity in line with government guidance. During the course of the year, central government has issued multiple revisions to the CJRS, which has further influenced the costs to these services. Following Government procurement guidance to support suppliers throughout the pandemic and ensure continuity of supply during and post Covid, the NYES Catering service have made supplier relief payments to support their local supply chain.

As well as the CJRS, the government has offered support via Sales, Fees and Charges (SFC) funding to businesses in the UK who have suffered loss of revenue due to lockdown and imposed tier restrictions. NYES has also utilised this scheme where it can be evidenced that a clear loss of revenue occurred due to reduced school activity as a result of Covid.

NYES continues to assess the true financial impact of Covid into FY21/22, taking into account evolving Government support and guidance..

The Covid-19 pandemic resulted in an unprecedented 40% reduction of construction activity in the UK and the temporary closure of the majority of construction sites. This led to a dramatic reduction in new commissions during Q1 and Q2 from both NYCC as well as APP's portfolio of non NYCC clients; a short term reduction to income and a consequential impact on APP's 20/21 Profit and Loss account. Since the initial shock of the first lock down in Construction the industry appears to now accept that there is a new way of working and consequently enquiries commissions and appointments have returned to pre Covid levels.

While Yorwaste has experienced some positive Covid-19 tests, all are thought to have originated from outside of the workplace, with no "Hot Spots" being identified. The Company has robust Covid-19 safe operating practices in place and continues to reinforce their importance. The Company is seeing a continued return of customers as restrictions ease. However, this is on the back of a difficult 12 months and Yorwaste may see the permanent closure of some customers, even if they manage to initially reopen.

The primary Covid-19 related challenge for Brierley Homes remains the effect on the UK economy and the consequential impact on sales revenues and/or construction partner capacity and cost. Extended Health and Safety risks associated with undertaking construction activities are also being considered in relation to Covid-19.

The latest lockdown restrictions (and the related economic challenges), coupled with the ending of the Stamp Duty holiday are expected to weigh on construction activity going forward. However, key market indicators such as national transactional volumes, mortgage market activity, mortgage product range and pricing all point to a more normally functioning market.

First North Law and the Veritau Group are not currently experiencing any negative financial impacts due to Covid-19, with key challenges not being significantly aligned with the pandemic. This will continue to be kept under regular review as the situation progresses.

Current Challenges

The majority of the past year has been spent adapting the NYES service delivery framework to support schools to remain open. However, current indications around the lockdown roadmap show encouraging and positive signs towards a return to pre Covid conditions. Whilst certain challenges in terms of face-to-face interaction start to gradually ease, NYES also continue to deliver in some areas in a much more streamlined and cost-effective way with vastly reduced overheads seen throughout most services.

Traditional areas of commercial challenge are still present, with an upcoming focus on 2 key areas: The DfE have set aside a £7m fund to increase the capacity of its SRMA (School Resource Management Advisor) programme with a remit to pursue cost efficiencies through its supplier base that could increase cost competitiveness in our markets as schools push costs down through procurement rounds.

Guidance has also been issued via the Education Secretary Gavin Williamson to push and promote schools to adopt the academy trust model. The DfE are trialing a flexible and "try before you buy" approach, with a credit of up to £10k if a suitable MAT partnership can be explored. Acadamisation can involve insourcing many of the services NYES provide and or disrupt long-standing relationships NYES have with schools. It is vital to the success of NYES that their offer remains based on superior service delivery and performance across the portfolio as a whole, with the provision of bespoke solutions to the customer across a diverse range of settings and needs.

This NYES service offer is heavily reliant on having the right calibre of people within the organisation to maintain and manage high standards of service delivery; key vacant roles within NYES have caused constraints in promoting and fully supporting school needs. A key challenge is to ensure sufficient capacity and resilience within teams to maintain and grow the sales pipeline and optimise opportunities presented for an evolving traded offer.

NYES activity continues to be aligned with the aspirations of the business plan, with the promotion of the professional offering aligned with proactive bidding for packages of work across a range of services, both in and out of county. Service excellence will be a key area of focus for NYES in the year ahead, building, yet not reliant upon, the strengthened relationships developed through significant, positive Covid response and support.

First North Law continues to operate in a challenging market. The ability to tender for external work had previously been hampered by the lack of a dedicated resource and some under utilisation of the document management system. These legacy issues inherited by the new Company Director have largely been addressed, and the company has now started submitting formal tenders for work. These are initially smaller tenders in line with present capacity as well as barriers such as the current PII insurance; both areas will need to be reviewed as the company grows throughout 2021/22.

The regular concerns for Brierley Homes are still present with the ability to procure land and/or secure residential planning consents to deliver homes at the required capacity being central to the success of the business. Another key issue is the potential for construction cost inflation as a consequence of high demand in the sector and material supply interruptions following a reduced period of manufacturing capacity during 2020 combined with Brexit trade changes.

Heightened Health and Safety risks associated with undertaking construction activities during a pandemic also continues to present a challenge to Brierley Homes.

The key issue and challenge for Align Property Partners is to re-establish and maintain its position in the market and attract new business following the Covid-19 related disruption. Rebuilding its workload via an existing and new client-base is dependent upon securing more external client income as NYCC-related revenues are likely to reduce in future years. The Company undertakes this against the backdrop of an increasingly competitive market place as competitors aggressively chase market opportunities. The retention of key staff and the recruitment of new expertise in what is currently a very buoyant market will present the Company with a challenge over the next 6 months.

For NYnet, significant progress has been made with the delivery of the Local Full Fibre Networks project, which suffered delays in obtaining wayleaves and access to sites. While significant advancement has been achieved, the hurdles with the NHS remain.

Due to wayleave issues and subsequent delays in migrating these sites to LFFN, the drive for new sales onto LFFN has been pushed back so that resources are not withdrawn from the main task of migrating sites. The roll out of public WiFi and IoT network will increase pressure on the NYnet technical resources but this has been anticipated in the funding of the later projects.

Challenges for Yorwaste continue to be focused around cost-effective operation, efficient asset utilisation, staff optimisation and the control of business costs in light of the considerable uncertainty that exists into 2021/22.

The Veritau group are faced with the need to maintain the required client-base and income streams in a competitive market, while continuing to provide the full suite of professional audit and assurance services.

Current and future areas of development

The arrival of Covid undoubtedly accelerated planned digital developments and challenged NYES to review delivery models, embracing innovation and new opportunities where possible. In July 2020, NYES launched its first digital training brochure. Aimed at education professionals, the brochure highlighted not only the extended portfolio of products and support for existing CPD requirements, but also the changing needs of the whole school community.

Covid has also impacted schools who through restrictions, lockdown and periods of isolation, have had to adapt from traditional teaching to remote or blended learning, through digital delivery and

increased use of Educational Technology (Edtech). The Edtech market in the UK is expanding year on year, and is on track to reach over £3bn in the near future. NYES sees Edtech as having market potential for business growth, allowing them to work closely with schools in developing an offering to meet digital needs and support all stakeholders in this arena. To this end, NYES have recently advertised a long awaited tender opportunity, for a supplier to build and manage an NYES Edtech portal, with the aim of signposting tried and tested quality Edtech solutions to schools nationally. As well as engaging with a wider audience with cross and upselling potential and raising brand awareness and credibility on a national stage, the platform is intended to generate a new revenue stream (though fees paid by carefully selected, featured companies).

A number of Edtech webinars were successfully facilitated with a range of expertise shared, as well as participation in the Great North Yorkshire Edtech Show, seeing representations from key companies and respected individuals from the sector. NYES are working closely in partnership with a number of companies, such as Century Tech, Pobble and its own Schools ICT service, with the intention being to develop existing services and collaborate with internal and external professionals, to ensure all technology needs within schools are met via 'NYES Digital' – the updated Schools ICT service. One of the advantages of digital delivery is the increased reach and potential audience; NYES has proved its ability to attract a national audience through the effective promotion of quality content and have welcomed the participation of international educators in webinars over recent months. There is significant demand for support towards digital skills and strategy development. NYES intend to meet this demand through the timely launch of appropriate product development, including unique accredited training.

In addition to the increasing digital needs of schools, Covid has also impacted on students and teachers significantly and NYES aims to work with a team of internal experts to develop a range of products that address new and increased demand in this area. This will include products and services which support staff and student wellbeing, HR issues, Health and Safety and not least 'catch up' related support, which will be needed for some time to come, given the gaps in learning and additional assistance that will be required as students transition to new Key Stages of education.

A further key development is a research project currently underway (funded by Innovate UK) which is exploring the development and effectiveness of an online alternative to traditional moderation. In collaborating with NY founded Edtech company Pobble on this exciting project, NYES are well positioned to become trailblazers of this new model and generate novel revenue streams, as well as raising writing standards and reducing teacher workload as a result.

Aside from Covid and digital delivery, the NYES strategy is to focus on enhancing a customer centric model and in servicing the Academy market with a bespoke offer in development for multi academy trusts (MATs). Plans are underway to develop key partnerships with a small number of trusts who are keen to work with NYES to develop its offer and become Ambassadors of a quality MAT product. A working group is being established, with representatives from across the portfolio, exploring collaboration and interdepartmental innovation in this key area. Retention levels are high but the intention is to improve this through the implementation and delivery of consistent excellent customer service, systems and management, with a commitment to remaining competitive on price.

Bid and tender activity has benefitted from the addition of graduate support, with systems and data now further improved - much needed in this increasingly competitive aspect of business

acquisition. Recent contract wins in and out of county continue to build a reputation and allow for further promotion of the NYES portfolio. A key strategic win during 2020/21, with a total contract value of up to £15m, was derived through relationships developed within NYES HR, NYES Digital and Veritau. This evidenced the strength of the collaborative partnership model within NYES.

NYnet is working with NYCC to develop a number of opportunities that will strengthen NYnet and allow alternative delivery methods for NYCC. NYnet is obtaining a Market Economic Operators Principals (MEOP) approval to allow NYnet to leverage and market the LFFN network to the private sector. NYnet is developing the IoT gateways and backhaul capability that will allow NYCC, other

Brierley Group companies, other public sector and private sector organisations to deploy IoT sensors that achieve efficiencies through real time data. From Govroam NYnet now has technical relationships with a significant number of public sector organisations outside the County border and will be building on them to try and bring in further opportunities.

The new Director of First North Law has focused on reducing the inefficiencies and leakage in the Company. Two training sessions have been provided by Case Management providers, which in turn have increased utilisation of this system and the Company is now carrying more work in progress into 2021/22

A draft business plan was finalised and agreed in Q4, with a marketing strategy to aid in the delivery of the overall growth plan, which is also in development. While the present trading environment is challenging, these elements are viewed as key in growing First North Law into a profitable enterprise. External recruitment is seen as essential and advertisements will go out in Q1 2021/22 for a part-time commercial solicitor. Paralegal and practice management support will also be required but this is likely to be sourced from within the existing NYCC legal team.

Communications and PR has been an increasing focus for Brierley Homes as it moves into the sales phase of the active schemes, with NYCC communications combining with a broader PR and communications strategy to further enhance the Brierley Homes brand and reputation in the marketplace.

As housing delivery rates increase in the business, mid-term recruitment needs are under review with a supporting role in sales and customer care being defined along with assistant project management resource. Business Cases for these roles are intended to be brought forward during the 2021/22 financial year with the intention of that resource being in place for the next financial year 2023/23.

Pipeline NYCC owned land assets at Osgodby (75 homes) and Leyburn (20 homes and dental facility) are in pre-application stages with the site at Leyburn on a trajectory for a planning application in 2021, whilst the Osgodby site is being prepared for submission in early 2022.

An additional land opportunity is being discussed with a land owner for another 25 – 30 homes with a view to delivering a planning consent on this land in advance of 2025.

A marketing launch has commenced on Woodfield Square, Pateley Bridge and Marton-cum-Grafton with early off plan sales being secured on all sites. At the time of writing 4 homes from 16 are reserved at Pateley Bridge, 2 from 19 at Woodfield Square and 2 from 13 at Yew Tree Farm. In broader terms, markets are proving extremely resilient and demand for housing in North Yorkshire is high with confidence in sales pace and property values being adjusted upwards in business forecasting accordingly.

Align Property Partners continue to recruit staff to service their increased workload and support client requirements around the completion of projects previously delayed due to Covid-19. APP continues to market to clients that can provide a consistency of work over a number of years and have been successful in establishing new framework agreements with North Lincolnshire and

Wigan Councils. APP is undertaking a review with all clients around their immediate and long-term capital spend.

All but a few APP staff are currently working from home and it is expected that all staff will return to an “office environment” in September 2021, however it is currently envisaged that a staff friendly policy of both office and home working will be introduced to assist in staff retention and recruitment. Additionally, key staff are being further identified and a clear career path is being scoped for these key personnel.

Yorwaste has continued to allow customers whose businesses were impacted by COVID to opt for a contract suspension without penalty. This approach has been well received and is viewed as preferable to customer contract terminations. The fleet reduction has been maintained, minimising costs.

New product development has been undertaken by the Veritau Group in order to enhance services. This is accompanied by heavy investment in professional training, a new website and client portal, and other back-office IT systems. The ongoing investment provides a firm foundation to both support future growth and maintain the pre-existing client base.

All staff are set up to work from home and to deliver services remotely. The group has also created a new Information Access team to exploit a number of potential business opportunities. Veritau is able to continue to provide services remotely and does not perceive any significant risk to either fee income or cost control in 2021/22 with a further objective being to embed these new ways of working.

2020/21 Q4 Brierley Group Financial Summary

The following table sets out the provisional 2020/21 financial performance as at the end of Q4 for North Yorkshire County Council’s share of the Brierley Group.

Brierley Group	Actuals 2020/21	Budget 2020/21	Variance 2020/21
	£,000	£,000	£,000
Revenue	59,913	64,668	(4,756)
Cost of Sale/Service	(53,429)	(56,790)	3,361
Gross Profit	6,484	7,878	(1,395)
Overheads & Other Costs	(6,266)	(6,506)	240
Other Trading Income/(Loss)	(586)	(523)	(63)
Other Gains/(Losses)	454	(336)	790
Operating Profit	86	514	(428)
Finance Income	32	44	(13)
Profit before Interest & Tax	117	558	(441)
Interest Paid	(530)	(619)	89
Tax (Expense)/Surplus	(226)	(39)	(187)
Profit after Tax	(639)	(99)	(539)

** Figures are provisional and based on NYCC Brierley Group shareholding.*

North Yorkshire Education Services

The final and consolidated trading performance for NYES is currently below the 2020/21 commercial target. The reduction in trading activity has been mitigated using CJRS and SFC

funding. The furlough scheme is due to end in September 2021, however with schools operating at high levels of activity following the reopening in March NYES anticipate a much lesser requirement during 2021/22.

NYES are working closely with services to look at how it can support business growth through targeted sales and marketing support as well as commercial intelligence. The NYES sales strategy outlines necessary activity to achieve realistic geographical growth targets, aided by support from new improved marketing operations, which following a period of consultation, subsequent restructure and collaboration with NYCC Corporate Communications, aims to provide a professional and resilient, account based service across the portfolio. In addition to the new marketing structure, the NYES logo has undergone a 'brand refresh', intended to bring uniformity across the traded services, whilst demonstrating the diversity of expertise and services within the one organisation.

Each service is currently going through a Traded Service Review with the NYES Commercial Director and the Commercial Head of Finance, with the aim of revising the business plans for each service, along with an associated bespoke marketing plan and necessary defined support to achieve agreed targets.

An investment has been made in Customer Relationship Management (CRM) functionality to improve consistency of communication between schools and NYES customer service teams, which has allowed an increased knowledge base that helps deal with any issues or concerns more effectively and aids goals with regard to customer service excellence. NYES are also progressing a financial business case to improve their E commerce platform functionality, to enhance the self-service offering and streamline some of the friction in the sales process.

Property and Facilities Management

Meal uptake has been turbulent through the year and further reduced following restrictions to open only to the children of key and critical workers. The challenge for 2021/22 is to restore confidence and increase uptake using targeted marketing and school support. Catering continues to invest in locally sourced produce and technology such as integration to Parent Pay to stay innovative, adapt and respond to school and parent needs.

The MASS service has continued to operate essential responsive maintenance and compliance activity throughout the year. The period of reduced activity should not necessarily impact upon costs in the long term, with buildings continuing to deteriorate and requiring maintenance and upkeep.

The service ended the year with surplus funds, which was taken to an earmarked reserve in order to fulfil expenses throughout 2021/22.

Access to schools has been assessed based on urgency and levels of risk, some normal cyclical and planned works have been deferred into FY21/22 with funding from the current period ring-fenced into a deferred work reserve to match the expenditure.

NYES cleaning became a vital part of schools' services throughout the pandemic. Previously seen as a passive service, Cleaning became vitally important in keeping schools hygienic and safe. Additional cleaning duties have been undertaken however service capacity has been an issue. High levels of sickness have resulted in additional hours with teams following guidance on having to self-isolate and shield.

The management team have recently invested in attaining ISO9001 accreditation, which will assist in streamlining and aiding future commercial tenders, while providing some best practice learning throughout the wider services.

Education and Skills

Covid restrictions have impacted on both the School Improvement and Specialist Careers Services, with typical service delivery reliant upon physical visits and support, resulting in significant loss of income from planned bespoke consultancy and face-to-face training (which transitioned into online learning from Sept 2020). The services have, where possible, utilised the Government support schemes to mitigate losses during the year, as well as redeploying staff into other areas within NYCC. The Clerking Service continues to look at extra capacity to support business growth and recent contract awards. As referred to above, opportunities now exist for product and service development, with plans underway for an enhanced Inclusion and School Improvement offer.

Professional Services

The Professional services group have been the most resilient within NYES and have managed to adapt their delivery models to meet customer requirements. Costs associated with face-to-face marketing, selling and service delivery have been saved as services have shifted to a virtual approach. Some loss of revenue through commissioned work in HR and ESS has been mitigated by managing costs and levels of staffing to support and service the customer. The Occupational Health, FMS, Procurement and Training and Learning services ended the year in a strong position and ahead of target.

The restricted access into Schools has impacted the onsite Schools ICT service (NYES Digital). In addition to this, the service has encountered supply chain delays due to a huge demand for technology in the UK as companies shifted to home working. The associated installation support contracts and cross-selling opportunities were also displaced.

NYnet

Measures implemented for the control of Covid-19 have resulted in challenging trading conditions for NYnet throughout the year. The company ended the 2020/21 with sales £203k above budget, and gross profit £35k above budget. Where sales growth was achieved, this was due mainly to increases in bandwidth delivery to both NHS and councils in order to enable them to deliver services and work remotely. NYnet came in below budget on Profit Before Interest and Tax due to the difficulties in migrating sites to LFFN as a result of wayleave issues.

First North Law

Income levels picked up substantially in Q4, though not sufficiently to prevent 2020/21 financial results from underperforming against associated Budgets. However, this underperformance of £14k was largely attributable to the first half of the year, with the recruitment of a Company Director and a Solicitor seeing a swift revenue impact despite the increased direct costs associated with the roles. The addition of the dedicated resource along with the move to monthly retainer agreements and a focus upon marketing of the service offer should put the Company in a much stronger position to improve its trading performance during 2021/22.

Brierley Homes

The loss for the year is due to a lack of any scheduled sales period in place for 2020/21. While projected direct costs for sites under active development have been capitalised as per company accounting policy, overheads and financing costs for the year both acted to deliver a negative trading outturn.

Schemes at Pateley Bridge and Bilton, Harrogate had associated land purchases completed in January 2021. Both sites have construction partners selected and work on-site commenced during Q4. In addition to this, construction on a third development at Marton cum Grafton is due to commence in Q1 of 2021/22, with a further 3 pipeline schemes being at an advanced planning stage and construction activity anticipated later in that year.

Align Property Partners

Align Property Partners delivered a small pre-tax loss for 2020/21 financial year, against a revised break-even budget. The severe trading disruption felt during the first half of the FY resulted in significant full-year projected losses being presented as late as September 2020.

A strong and swift return to more normalised trading activity has acted to reduce APP's trading losses substantially and it is anticipated that this recovery will continue into 2021/22, allowing the Company to return to pre-Covid levels of trading performance.

Yorwaste

The Company performed well during Q4 despite trading continuing to be difficult and at times uncertain. Commercial trade declined from the Christmas peak but started to return in the last few weeks of Q4 finishing at around 80% of budgeted lifts. Third-party tipping was close to budget.

The transition to longer operating hours, higher route densities, and reduced fleet numbers provided a significant, but not complete cost offset to sales shortfall.

Veritau

The Veritau group delivered a provisional 2020/21 positive profit before tax outperformance against budget. Revenues and service delivery saw little to no impact as a result of Covid-related disruption, while cost savings derived from the move to remote provision allowed significant savings to be made in terms of both direct and indirect costs.

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Shareholders Committee

Brierley Group Plan

2021-24

Brierley Group Plan Summary

Introduction

The phrase ‘exceptional circumstances’ would seem trite and overused by now however it is a fair description of the year gone and, in particular, for the Brierley Group paints a mixed picture of performance. With reported profit before interest & tax of £117k vs a budget of £558k (variance of -£441k), the year can be considered to be relatively successful given the context. Within that detail, there are a number of notable successes:

- General responsiveness of the Group to both changing circumstances (working remotely) and volatility in demand, ensuring costs were mitigated as far as possible through use of the furlough scheme or otherwise via close management. This was particularly important for those companies trading within the Education sector with schools being closed during lockdown periods. At its peak 670 staff were on furlough representing 25% of the total workforce.
- Continued roll out of Local Full Fibre Network (LFFN) by NYnet, creating the platform for future business growth.
- Yorwaste enabled vital continuity of service at household waste recycling centres (HWRCs) through use of COVID-19 safety measures.
- Planning consent given for four Brierley Homes sites: Woodfield Square (19 units), Pateley Bridge (20 units), Marton-cum-Grafton (22 units) and Swainby (9 units) with construction now underway at three of those sites (all except Swainby). This marks a step up for the company moving from its pilot phase into delivery.

The full extent of the challenge to the Brierley Group through the year can be best demonstrated by considering that during periods of lockdown, e.g. schools closures, the ability to trade was severely restricted. Given there were two periods of national lockdown as well as local measures in-between, a total of approximately four trading months were lost in the year. It is therefore to be expected that a number of the constituent bodies within the Brierley Group have faced particular challenges and underachieved against their pre-COVID-19 business plans. North Yorkshire Education Services stands out amongst those given its nature of trading into the education sector with sales of £34.8m vs plan of £39.1m (c11% drop in earning).

Consideration also needs to be given towards the Brierley Group’s supply chain, who themselves have not been immune to the market issues. In addition to COVID-19, Brexit has thrown a further level of complication and potential risk into the Group’s ability to draw in the supplies and services it requires to provide customers with the end product.

- Catering – it comes as no surprise that the catering sector, and more broadly, the hospitality industry has suffered significantly through the pandemic. Whilst the service has supported free school meals through school closures and holidays; there has been a significant drop in meals for ‘mainstream’ pupils during those closures. Despite the County Council providing a level of financial aid to its suppliers, there is a continued risk that lower demand exposes that supply chain.
- IT components – global shortage in semi-conductors driven both by reduced supply (due to the pandemic) and increase in demand (due to changing habits). The impact is both in terms of services provided to customers (e.g. Schools ICT as part of NYES) as well as directly to the Group’s IT functions.
- Vehicle procurements – ahead of go-live NY Highways has experienced difficulties in sourcing vehicles from the EU in particular in a reliable and timely manner. Again, this is due in part to reduced supply and increase in demand, e.g. additional vehicles required for supermarket home deliveries.

And finally, the County Council took a decision on 16 February 2021¹ to ‘wind-up’ SJB Recycling Ltd, the company has been a trading body in the Brierley Group since its inception and therefore a notable change.

Current Market Conditions

Uncertainty is the watchword for the national, and to a greater extent the international, picture of trading over the near-term horizon. As the UK recovers from the economic & humanitarian shock of 2020, there are causes for optimism on what the future looks like, with associated opportunity within. Figure 1 below shows the extent of that shock and where the economy sits now relative to its pre-covid levels.

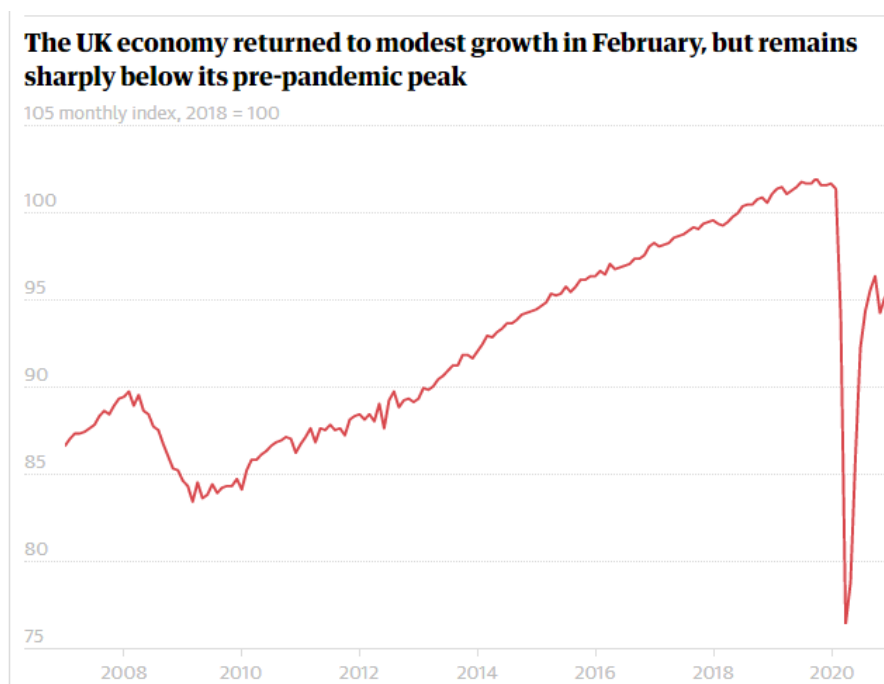


Figure 1 - Source ONS (via Guardian)

Closer to home, the Brierley Group is once again actively trading with each company now relatively unfettered, i.e. current lockdown measures are not prohibitive; a good indicator of this is that only 14 employees are currently on full time furlough compared to the peak of 670.

Government’s “Roadmap out of lockdown” sets a series of clear steps moving towards full recovery with dates of 17 May (most businesses in all but the highest risk sectors) and 21 June (remove all legal limits on social contact) being key. Uncoupling the impact of Brexit from easing of lockdown measures is difficult, however indicators are that the UK economy is starting to rebound:

1. Bank of England – interest rates held at 0.1% with positive sentiment that economy is expected to grow 7.25% in 2021².
2. Unemployment – with the furlough scheme extended to September 2021, it is difficult to say with certainty or accuracy how UK unemployment will fare through the remainder of the year, however the current measure shows it has fallen to 4.9% in the three months to February 2021 (compared to c 4% pre-covid)
3. Retail sales have returned close to pre-pandemic levels although there has been a shift to online.

¹ Decision record can be found: <https://edemocracy.northyorks.gov.uk/documents/s2630/Winding-up%20of%20SJB%20Recycling%20Ltd.pdf>

² Source: Bank of England 6 May 2021: <https://www.bankofengland.co.uk/monetary-policy-summary-and-minutes/2021/may-2021>

Putting this together gives some cause for optimism for the prospects of the Group over the next twelve month's trading.

Longer term, it is clear there is a structural challenge to reinvigorate the economy. The Government have announced a series of funding initiatives, e.g. Levelling Up Fund, Community Renewal Fund, National Bus Strategy funding, etc... which all intend to promote growth nationally. This has been backed through the Queen's speech on 11 May 2021, where the overriding message was, through investment, deliver national recovery. Notwithstanding, the question remains on whether this will achieve the desired result as it is fair to assume there will be more turbulence ahead.

Group Business Plan Summary

Given that context, it is important the Group sets a level of ambition to match those opportunities yet similarly account for threats & shocks over the three-year plan period.

The areas of focus are:

- Continue to ensure high levels of health and safety and environment performance.
- In recovering from COVID-19 and lockdown measures, help support and develop our existing customers with a particular focus on the education, health and other public sector bodies.
- Develop products and services that meet the needs of both new and existing customers and are fit for the future.
- Seek sustainability improvements and at least match the shareholder's ambition of becoming net carbon neutral by, or as close as possible to, 2030.
- Increase shareholder value (see financial section).

NY Highways

The imminent launch of the company, NY Highways, on 1 June 2021 marks a significant milestone for both the County Council and the Brierley Group. Its significance is borne out of ambition at both scale and complexity for the change undertaken. The following extract from the company's business plan best describes the challenges being faced:

Our Vision, Mission and Objectives are the foundation to this Business Plan: they demonstrate our planned contribution to North Yorkshire by pursuing our vision to become a nationally recognised brand, famous for our progressive and innovative drive to continually adapt to a changing world.

Our values of Safety, Customer, Quality, Innovation, Agility and Ethics will shape the way we work while focusing on delivering efficient, effective and right-first-time highways services for the citizens of North Yorkshire; cementing North Yorkshire County Council's (NYCC) reputation as an innovative and forward-thinking Council. Central to our purpose is to provide commercial advantage to the Council and become service provider of choice for our peers and third-party clients. This Year One plan sets out our success criteria and plots a path to achieving our goals.

NY Highways is committed to making a meaningful, positive impact on our communities by contributing to resilience, safety, sustainable economic growth, and respecting and enhancing the environment in which we live. We will seek to actively reduce the carbon footprint of previous highways operations and aim to recycle 80% of waste materials created by the business.

It is our intention to provide added value in 2021/22 and beyond by delivering desirable outcomes for the Council: working with more North Yorkshire SMEs; contributing to North Yorkshire's economic growth by supporting people back into work; and enhancing skills in the workforce. For every £1 we spend, we will target £0.70 being re-invested back into the local economy. NY Highways values its people above all else and will invest in them to ensure that all our people are encouraged to maximise their potential, contribute to our future success as a business and add value to our communities in a socially responsible and sustainable way.

The mobilisation of any highway's maintenance contract is complex and challenging. Mobilisation coupled with the setting up of a new business entity requires significant investment of time and resources to ensure that services are delivered on day one without detriment to the customer. NYCC has delivered that investment and NY Highways is set to be the first Highways Teckal in the country to be formed after outsourcing delivery to the private sector. NYCC have delivered several high-quality Teckal businesses through the Brierley Group, but NY Highways represents the most significant challenge to date. Our first year will be a "baselining" year, going beyond the quantum of money it takes to run the business to gain an in-depth knowledge of the cost base to provide a foundation for the coming years. Our delivery programme for 2021/22 is outlined, together with our financial, operational, and cultural predictions for the year ahead and beyond.

To move the business forward beyond year one, we have an ambitious Business Development Plan linked to a buoyant highways market and aims to reduce revenue spending.

Brierley Group Plan Financial Summary

The following table sets out the 2020/21 financial position as at the year-end for North Yorkshire County Council's share of the Brierley Group.

Brierley Group	Actuals 2020/21	Budget 2020/21	Variance 2020/21
	£,000	£,000	£,000
Revenue	59,913	64,668	(4,756)
Cost of Sale/Service	(53,429)	(56,790)	3,361
Gross Profit	6,484	7,878	(1,395)
Overheads & Other Costs	(6,266)	(6,506)	240
Other Trading Income/(Loss)	(586)	(523)	(63)
Other Gains/(Losses)	454	(336)	790
Operating Profit	86	514	(428)
Finance Income	32	44	(13)
Profit before Interest & Tax	117	558	(441)
Interest Paid	(530)	(619)	89
Tax (Expense)/Surplus	(226)	(39)	(187)
Profit after Tax	(639)	(99)	(539)

* Consolidated figures based on NYCC Brierley Group shareholding.

The following table sets out the financial position for North Yorkshire County Council's share of the Brierley Group over the three-year period 2020-23:

Brierley Group	Budget 2020/21	Actual 2020/21	Plan 2021/22	Plan 2022/23
	£,000	£,000	£,000	£,000
Revenue	64,668	59,913	102,532	123,719
Profit before Tax	558	117	1,121	2,351

Note:

2021/22 excludes Brierley Homes however does include 10 months of trading for NY Highways after going live 1 June 2021.

2022/23 excludes Brierley Homes however does include a full year of trading for NY Highways.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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North Yorkshire County Council

Shareholder Committee

25 May 2021

Articles of Association for Align Property Partners Limited

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 Purpose

- 1.1 To seek shareholder approval of revised Articles of Association of Align Property Partners Limited.

2.0 Background

- 2.1 The Executive approved the setup of Align Property Partners Limited on 27th September 2016 to deliver estate management services throughout the property lifecycle of the Council's relevant properties; property consultancy services; and design, management and contract administration of projects.
- 2.2 Align Property Partners Limited was incorporated on 20 September 2016 as a private company limited by shares, and is a wholly owned subsidiary of the Council. As part of good governance, the companies and the Council have carried out a review of the governance documents of the company and wish to make a number of changes to incorporate best practice with regard to industry standards with regard to such Council owned companies.
- 2.3 The Company was established with Model Articles of Association. This report considers bespoke Articles of Association which will assist the Council in demonstrating its control over the Company.
- 2.4 Following on from the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ("the 2020 Regulations"), which allowed for committee meetings to be held remotely, the County Council resolved at its meeting on 5 May 2021 that, for the present time, Committee business should be continued via the Chief Executive Officer making urgent decisions that would previously have been made by the Council's committees, under his emergency decision making powers in the Officers' Delegation Scheme, following consultation with other Officers and Members as appropriate and taking account of the Committee's views and recommendations.

3.0 The Teckal Exemption

- 3.1 The Council is a contracting authority for the purposes of the Public Contracts Regulations 2015 (the Regulations). Public contracts must be awarded in accordance with the Regulations; however, there are certain exemptions to this.
- 3.2 One of these exemptions is known as the Teckal test, which is set out in Regulation 12 of the Regulations. The basic test provides that a public contract awarded by a contracting authority to an entity, which is owned by it, falls outside of the procurement rules where all of the following conditions are fulfilled:

- (a) **the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;**
- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

3.3 The first element of the Teckal test: "*Control*", is established where all of the following conditions are fulfilled:

- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or
- (b) the control is exercised by another legal person which is itself controlled in the same way by the contracting authority.

3.4 One clear way for a shareholder to demonstrate compliance with the 'control' element of the Teckal test is through the requirement for unanimous approval of the Reserved Matters in the Articles of Association.

3.5 Align Property Partners Limited adopted Model Articles of Association upon incorporation under the Companies Act 2006. Whilst the Company operates within the requirements of the Teckal test and is considered to be a Teckal compliant company, these bespoke Articles of Association mean that the Council can clearly and easily demonstrate that it meets the 'control' limb of the Teckal test outlined above.

3.6 The Articles of Association contained at Appendix 1 are considered to exercise sufficient control over the company to be Teckal compliant.

3.7 On 7 May 2021 the directors of the company resolved to request that the Council as shareholder pass the Written Resolution to enact these changes. The Written Resolution at Appendix 2 is the formal approval of the Articles of Association by the shareholder, which must be signed and sent to Companies House.

4.0 Recommendation

4.1 The Shareholder Committee is asked to recommend to the Chief Executive that under his emergency delegated powers he:

- (i) Approve the Articles of Association for Align Property Partners Limited; and
- (ii) Sign off the Written Resolution on behalf of the shareholder.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)

Author of report: Sarah Morton, Senior Solicitor Commercial Contracts and Procurement
Presenter of report: Barry Khan, Assistant Chief Executive (Legal and Democratic Services)

13 May 2021

Appendices:

Appendix 1 - Articles of Association

Appendix 2 –Written Resolution

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COMPANY NUMBER 10385861

**THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION
OF
ALIGN PROPERTY PARTNERS LIMITED**

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THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
ALIGN PROPERTY PARTNERS LIMITED

PART 1 – INTERPRETATION

1 DEFINED TERMS

1.1 In the Articles, unless the context requires otherwise:

Accounting Reference Date means 31 March

Articles means the Company's articles of association as amended from time to time

bankruptcy includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy

Board means the board of Directors of the Company or such of them as are present at a duly convened and quorate meeting of the Directors

Business has the meaning given in Article 6.1

Business Day means Monday to Friday inclusive excluding public bank holidays

Business Plan means the operational business plan and budget of the Company as adopted and amended in accordance with Article 6

Chair has the meaning given in Article 13

Chair of the Meeting has the meaning given in Article 46

Companies Acts means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company

Company means the company governed by the Articles

Conflict has the meaning given in Article 15

Council means North Yorkshire County Council and any statutory successor

Council Director means a Director of the Company who is an employee, elected member or officer of the Council

Council Shareholder Committee means the person(s) nominated by the Council from time to time to act as its authorised representative(s) and on its behalf which shall be determined by the Council in accordance with its constitution from time to time and notified to the Company in writing. References to the Council Shareholder Committee shall be deemed to include any members thereof and any relevant officers with delegated authority to act for the Shareholder Committee

Director means a director of the Company, and includes any person occupying the position of director, by whatever name called

Distribution Recipient has the meaning given in Article 36.2

Document includes, unless otherwise specified, any Document sent or supplied in Electronic Form

Electronic Form has the meaning given in section 1168 of the Companies Act 2006

Eligible Director means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Directors

Financial Year means each accounting reference period of 12 months ending on the Accounting Reference Date or such longer or shorter period as the Council shall from time to time determine

fully paid in relation to a Share, means that the nominal value and any premium to be paid to the Company in respect of that Share have been paid to the Company

Group Company means, in relation to a company:

- (a) any subsidiary of the Company;
- (b) any parent undertaking or undertakings of the Company; and
- (c) any subsidiary of any such parent undertakings

Hard Copy Form has the meaning given in section 1168 of the Companies Act 2006

Holder in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares

Independent Director means a Director appointed who is not an employee, officer or elected member of the Council

Instrument means a Document in Hard Copy Form

ordinary resolution has the meaning given in section 282 of the Companies Act 2006

paid means paid or credited as paid

participate, in relation to a Directors' meeting, has the meaning given in Article 11

Proxy Notice has the meaning given in Article 52

Reserved Matter means any matter reserved by the Council as a reserved matter in accordance with Article 3 including the list of reserved matters at Schedule 1 to these Articles.

Shareholder means a person who is the Holder of a Share.

Shares means shares in the Company

special resolution has the meaning given in section 283 of the Companies Act 2006

Transmittee means a person entitled to a Share by reason of the death or bankruptcy of a Shareholder or otherwise by operation of law

writing means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise

- 1.2 Unless the context otherwise requires, other words or expressions contained in the Articles bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles become binding on the Company.
- 1.3 A reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.14 References to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.15 The expressions **body corporate**, **holding company**, **subsidiary**, **parent undertaking**, **subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- 1.15.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
- 1.15.2 any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or

- 1.15.3 any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (a) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (b) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

PART 2 - DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

2 DIRECTORS' GENERAL AUTHORITY

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

3 SHAREHOLDERS' RESERVE POWER AND RESERVED MATTERS

- 3.1 The Council may, by special resolution, direct the Directors to take, or refrain from taking, specified action.
- 3.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.
- 3.3 Insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

4 DIRECTORS MAY DELEGATE

- 4.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles as follows:
 - 4.1.1 to such person or committee;
 - 4.1.2 by such means (including by power of attorney);
 - 4.1.3 to such an extent;
 - 4.1.4 in relation to such matters or territories; and
 - 4.1.5 on such terms and conditions,

as they think fit.

4.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.

4.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

5 COMMITTEES

5.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by Directors.

5.2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

6 THE BUSINESS AND BUSINESS PLANNING

6.1 The business of the Company (**Business**) shall be to provide estate management services throughout the property lifecycle of the Council's relevant properties; property consultancy services; design, management and contract administration of projects; highways design service; other similar services and works, and provide similar services to other customers in accordance with any Business Plan then in force or as otherwise determined by the Shareholder from time to time.

6.2 The Company shall prepare in respect of each Financial Year a Business Plan to include:

6.2.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);

6.2.2 a balance sheet forecast;

6.2.3 a minimum three year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company and a list of key risks of its business;

6.2.4 long term projections to cover a period of three years from the 31 March;

6.2.5 a plan for the use of any surpluses made in each Financial Year including the making of any distribution of profit subject to the provisions of the Companies Act 2006;

6.2.6 an annual profit and loss account and cashflow statement;

6.2.7 any risks and opportunities for the Company;

6.2.8 a report of Health and Safety and Environmental issues for the Company;

6.2.9 tenders for future work; and

6.2.10 such other content as the Council may require from time to time and notify to the Company in writing.

6.3 The Business Plan for a given Financial Year shall be:

6.3.1 prepared by the Board and circulated by the Board to the Council in draft form not less than two months prior to the end of the Financial Year preceding the Financial Year to which the draft Business Plan relates; and

6.3.2 considered and, if thought fit, approved as soon as possible by the Council and in any event within two months of the date of receipt of the draft Business Plan from the Board.

- 6.4 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with articles 6.2 and 6.3 and that the business of the Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.

7 PROVISION OF INFORMATION

- 7.1 The Company shall provide to the Council:
- 7.1.1 draft annual accounts in accordance with a timetable as agreed with the Council;
 - 7.1.2 final audited annual accounts by 31 December in each Financial Year;
 - 7.1.3 minutes of all Board meetings within 30 Business Days after the relevant Board meeting to which they relate;
 - 7.1.4 all information required to be provided pursuant to any other contractual commitments, within a timescale agreed with the Council; and
 - 7.1.5 any other information reasonably required by the Council from time to time.
- 7.2 The Company shall respond promptly to all reasonable requests from the Council for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Council may require.
- 7.3 The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.
- 7.4 The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.
- 7.5 The Company shall immediately notify the Council of:
- 7.5.1 any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company; and
 - 7.5.2 any matter of which it is aware which may bring the Company or the Council into disrepute.

DECISION-MAKING BY DIRECTORS

8 DIRECTORS TO TAKE DECISIONS COLLECTIVELY

- 8.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 9.
- 8.2 If only one Director is eligible to vote on any authorisation required under Article 15, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.
- 8.3 Each Director shall (so long as he or she is an Eligible Director) be entitled to cast one vote on any resolution put to the Directors. In the event that a Council Director (who would have been an Eligible Director) is absent, those Council Directors present at the meeting (who are also Eligible Directors) can cast the absent Council Director's vote.
- 8.4 If the numbers of votes for and against a proposal are equal, the Chair shall not have a casting vote.

9 UNANIMOUS DECISIONS

- 9.1 A decision of the Directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 9.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each Eligible Director or to which each Eligible Director has otherwise indicated agreement in writing.
- 9.3 A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

10 CALLING A DIRECTORS' MEETING

- 10.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors and the Council in accordance with Article 10.2 or by authorising the company secretary (if any) to give such notice.
- 10.2 A meeting of the Directors must be called by at least seven days' notice unless either:
- 10.2.1 the Directors and the Council unanimously agree otherwise; or
 - 10.2.2 urgent circumstances require shorter notice.
- 10.3 Notice of any Directors' meeting must include:
- 10.3.1 its proposed date and time;
 - 10.3.2 where it is to take place;
 - 10.3.3 if it is anticipated that persons participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting;
 - 10.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
 - 10.3.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 10.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

11 PARTICIPATION IN DIRECTORS' MEETINGS

- 11.1 Subject to the Articles, Directors **participate** in a Directors' meeting, or part of a Directors' meeting, when:
- 11.1.1 the meeting has been called and takes place in accordance with the Articles; and
 - 11.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 11.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 11.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

- 11.4 The Council Shareholder Committee shall have the right to receive notice of and nominate person(s) to attend (but not vote at) any Board meetings and receive papers in relation to such meetings at the same time as those papers are given to the Directors.

12 QUORUM FOR DIRECTORS' MEETINGS

- 12.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 12.2 Subject to Article 8.2, the quorum for a Directors' meeting shall be two Directors including at least one Council Director.
- 12.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:
- 12.3.1 to appoint further Directors; or
 - 12.3.2 to call a general meeting so as to enable the Shareholders to appoint further Directors.
- 12.4 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine in accordance with the Articles.

13 CHAIRING OF DIRECTORS' MEETINGS

- 13.1 The person appointed pursuant to Article 13.2 or Article 13.3 (as the case may be) shall be known as the Chair.
- 13.2 With the prior written consent of the Council, the Directors may:
- 13.2.1 appoint a person chair of the Directors;
 - 13.2.2 determine the period for which he is to hold office; and
 - 13.2.3 at any time remove him from office.
- 13.3 If at the date and time of a meeting of the Directors no person has been appointed as Chair pursuant to Article 13.2, then the participating Directors at that meeting may appoint a Director present to chair the meeting. The participating Directors may also terminate the appointment of a person as Chair made under this Article 13.3 at any time during the meeting at which he is appointed.

14 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY

- 14.1 The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.
- 14.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office:
- 14.2.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company of the Company or in which either or both of them is/are otherwise interested;
 - 14.2.2 may be a director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company of the Company or in any body corporate promoted by the Company, the Council, or a Group Company of the Company, or in which any of them is/are interested; and

- 14.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).
- 14.3 For the purposes of this Article 14:
- 14.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of the Council or any Group Company of the Company; and
- 14.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.
- 14.4 Where a Director is a director, officer, or employee of the Council or a Group Company of the Company, he:
- 14.4.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and
- 14.4.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of the Council or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 15.5.

15 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION

- 15.1 The Directors may authorise any matter which would otherwise involve a Director (a **Relevant Director**) breaching his duty under section 175 of the Companies Act 2006 to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a **Conflict**).
- 15.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under the Articles save that the Relevant Director (and any Director) shall not count towards the quorum nor vote on any resolution giving such authority.
- 15.3 Where the Directors give authority in relation to a Conflict:
- 15.3.1 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and
- 15.3.2 the Directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.
- 15.4 A Conflict in relation to a Director arising solely as a result of him being a director, officer or employee of the Council or any Group Company of the Council shall be deemed to have been authorised for the purposes of this Article 15 and section 175 of the Companies Act 2006.
- 15.5 Where Article 15.4 above applies or the Directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in Article 14 (a **Permitted Situation**) applies:
- 15.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;

15.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict or Permitted Situation; and

15.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.

15.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the Council for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this Article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

16 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING

16.1 Subject where applicable to disclosure in accordance with the Articles and subject to any terms imposed by the Directors in relation to any Conflict or Permitted Situation, a Director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.

16.2 However, a Director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.

16.3 Subject to Article 16.4 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

16.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

17 RECORDS OF DECISIONS TO BE KEPT

The Directors must ensure that the Company keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

18 DIRECTORS' DISCRETION TO MAKE FURTHER RULES

Subject to the Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

APPOINTMENT OF DIRECTORS

19 METHODS OF APPOINTING DIRECTORS

19.1 The board of Directors shall comprise of a minimum of three Directors and a maximum of five Directors to include:

19.1.1 at least 2 Council Directors appointed in accordance with Article 19.3

19.2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed as a Director in accordance with these Articles.

- 19.3 Subject to the Articles, any appointment(s) or termination(s) of a Council Director shall be effected by the Council, giving notice in writing to the Company, with the date of appointment or termination effective on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 19.4 Any Independent Directors shall be appointed by a resolution of the Directors, subject to the prior written approval of the Council.
- 19.5 The Council may at any time appoint any person to be a Director, whether as an additional Director or to fill a vacancy, and may remove from office any Director howsoever appointed and any alternate Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Company by the Council. Any such appointment or removal shall take effect:
- 19.5.1 if it is effected by ordinary resolution, at the point the resolution is passed; and
- 19.5.2 if it is effected by notice in writing to the Company, when it is delivered to the registered office of the Company or, if it is produced at a meeting of the Directors, when it is so produced or, if sent by electronic means to an address generally used by the Company, when it is sent.
- 19.6 Any removal pursuant to this Article 19 shall be without prejudice to any claim that a director may have under any contract between him and the company.

20 TERMINATION OF A DIRECTOR'S APPOINTMENT

- 20.1 A person ceases to be a Director as soon as:
- 20.1.1 the Council notifies the Company that the individual is to be removed as a Director;
- 20.1.2 the Council serves notice to remove the Director in accordance with Article 19.5, and such notice has taken effect in accordance with its terms;
- 20.1.3 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
- 20.1.4 a bankruptcy order is made against that person;
- 20.1.5 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 20.1.6 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or
- 20.1.7 notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms.

21 DIRECTORS' REMUNERATION AND EXPENSES

- 21.1 Any remuneration of the Directors shall require the prior approval of the Council.
- 21.2 Any policy regarding expenses of Directors (and alternate Directors) shall be determined by the Council.

22 ALTERNATE DIRECTORS

- 22.1 Any Council Director (the **Appointor**) may appoint any person (whether or not a Director) to be his or her alternate to exercise the Appointor's powers, and carry out the Appointor's responsibilities, in

relation to the taking of decisions by the Directors, in the absence of the Appointor. A person may be appointed an alternate by more than one Director.

- 22.2 Any appointment or removal of an alternate must be approved in writing by the Council and be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, or in any other manner approved by the Directors.
- 22.3 The notice must:
- 22.3.1 identify the proposed alternate; and
 - 22.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the Appointor.
- 22.4 An alternate has the same rights, in relation to any decision of the Directors, as the alternate's Appointor.
- 22.5 Except as the Articles specify otherwise, alternates:
- 22.5.1 are deemed for all purposes to be Directors;
 - 22.5.2 are liable for their own acts and omissions;
 - 22.5.3 are subject to the same restrictions as their Appointors; and
 - 22.5.4 are not deemed to be agents of or for their Appointors,
- and, in particular (without limitation), each alternate shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.
- 22.6 A person who is an alternate but not a Director may, subject to him being an Eligible Director:
- 22.6.1 be counted as participating for the purposes of determining whether a quorum is present at a meeting of Directors (but only if that person's Appointor is an Eligible Director and is not participating); and
 - 22.6.2 participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, and does not himself participate).
- 22.7 A Director who is also an alternate is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the Directors.
- 22.8 An alternate may be paid expenses and may be indemnified by the Company to the same extent as if he were a Director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.
- 22.9 A person's appointment as an alternate (in respect of a particular Appointor) terminates:
- 22.9.1 when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or
 - 22.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or
 - 22.9.3 when the alternate's Appointor ceases to be a Director for whatever reason.

PART 3 - SHARES AND DISTRIBUTIONS

SHARES

23 ROLE OF SHAREHOLDER COMMITTEE

- 23.1 Any notice to or from the Council shall be sent to or from the Council Shareholder Committee. Where a consent or approval is expressed in these Articles to be required of the Council, it shall be given by the Council Shareholder Committee. Such consent or approval shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.
- 23.2 Once a consent or approval is given in accordance with Article 23.1 then, to the extent a special or an ordinary resolution is required pursuant to the Companies Acts or otherwise, the Company shall prepare and circulate to the Council a draft resolution for consideration and, if thought fit, approval by the Council.

24 APPOINTMENT OF SHAREHOLDERS

- 24.1 The subscribers to the Memorandum are the first Shareholders.
- 24.2 No person shall be admitted as a Shareholder unless they are approved unanimously by the Shareholders.
- 24.3 The Directors or company secretary (if appointed) must keep a register of names and addresses of the Shareholders.

25 LIABILITY OF SHAREHOLDERS

The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them.

26 ALL SHARES TO BE FULLY PAID UP

- 26.1 No Share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.
- 26.2 This does not apply to Shares taken on the formation of the Company by the subscribers to the Company's Memorandum.

27 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE

- 27.1 Subject to the Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares with such rights or restrictions as may be determined by ordinary resolution.
- 27.2 The Company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the Holder, and the Directors may determine the terms, conditions and manner of redemption of any such Shares.

28 COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS

Except as required by law, no person is to be recognised by the Company as holding any Share upon any trust, and except as otherwise required by law or the Articles, the Company is not in any way to

be bound by or recognise any interest in a Share other than the Holder's absolute ownership of it and all the rights attaching to it.

29 SHARE CERTIFICATES

- 29.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.
- 29.2 Every certificate must specify:
- 29.2.1 in respect of how many Shares, of what class, it is issued;
 - 29.2.2 the nominal value of those Shares;
 - 29.2.3 that the Shares are fully paid; and
 - 29.2.4 any distinguishing numbers assigned to them.
- 29.3 No certificate may be issued in respect of Shares of more than one class.
- 29.4 If more than one person holds a Share, only one certificate may be issued in respect of it.
- 29.5 Certificates must be executed in accordance with the Companies Act 2006.

30 REPLACEMENT SHARE CERTIFICATES

- 30.1 If a certificate issued in respect of a Shareholder's Shares is:
- 30.1.1 damaged or defaced; or
 - 30.1.2 said to be lost, stolen or destroyed,
- that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.
- 30.2 A Shareholder exercising the right to be issued with such a replacement certificate:
- 30.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - 30.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
 - 30.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

31 SHARE TRANSFERS

- 31.1 Shares may be transferred by means of an Instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor.
- 31.2 No fee may be charged for registering any Instrument of transfer or other Document relating to or affecting the title to any Share.
- 31.3 The Company may retain any Instrument of transfer which is registered.
- 31.4 The transferor remains the Holder of a Share until the transferee's name is entered in the register of members as Holder of it.

31.5 The Directors may refuse to register the transfer of a Share, and if they do so, the Instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

32 TRANSMISSION OF SHARES

32.1 If title to a Share passes to a Transmittree, the Company may only recognise the Transmittree as having any title to that Share.

32.2 A Transmittree who produces such evidence of entitlement to Shares as the Directors may properly require:

32.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and

32.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

32.3 However, Transmittrees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of Shares to which they are entitled, by reason of the Holder's death or bankruptcy or otherwise, unless they become the holders of those Shares.

33 EXERCISE OF TRANSMITTEES' RIGHTS

33.1 Transmittrees who wish to become the holders of Shares to which they have become entitled must notify the Company in writing of that wish.

33.2 If the Transmittree wishes to have a Share transferred to another person, the Transmittree must execute an Instrument of transfer in respect of it.

33.3 Any transfer made or executed under this Article is to be treated as if it were made or executed by the person from whom the Transmittree has derived rights in respect of the Share, and as if the event which gave rise to the transmission had not occurred.

34 TRANSMITTEES BOUND BY PRIOR NOTICES

If a notice is given to a Shareholder in respect of Shares and a Transmittree is entitled to those Shares, the Transmittree is bound by the notice if it was given to the Shareholder before the Transmittree's name has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

35 PROCEDURE FOR DECLARING DIVIDENDS

35.1 The Company may by ordinary resolution declare dividends, and the Directors may decide to pay interim dividends.

35.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.

35.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.

35.4 Unless the Shareholders' resolution to declare or Directors' decision to pay a dividend, or the terms on which Shares are issued, specify otherwise, it must be paid by reference to each Shareholder's holding of Shares on the date of the resolution or decision to declare or pay it.

35.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on Shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

35.6 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

35.7 If the Directors act in good faith, they do not incur any liability to the holders of Shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on Shares with deferred or non-preferred rights.

36 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS

36.1 Where a dividend or other sum which is a distribution is payable in respect of a Share, it must be paid by one or more of the following means:

36.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in writing or as the Directors may otherwise decide; or

36.1.2 any other means of payment as the Directors agree with the Distribution Recipient either in writing or by such other means as the Directors decide.

36.2 In the Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:

36.2.1 the Holder of the Share; or

36.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members; or

36.2.3 if the Holder is no longer entitled to the Share by reason of death or bankruptcy their executor or trustee in bankruptcy; or

36.2.4 otherwise by operation of law, the Transmitter.

37 NO INTEREST ON DISTRIBUTIONS

37.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:

37.1.1 the terms on which the Share was issued; or

37.1.2 the provisions of another agreement between the Holder of that Share and the Company.

38 UNCLAIMED DISTRIBUTIONS

38.1 All dividends or other sums which are:

38.1.1 payable in respect of Shares; and

38.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

38.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.

38.3 If:

38.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and

38.3.2 the Distribution Recipient has not claimed it,

the Distribution Recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

39 NON-CASH DISTRIBUTIONS

39.1 Subject to the terms of issue of the Share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a Share by transferring non-cash assets of equivalent value (including, without limitation, Shares or other securities in any Company).

39.2 For the purposes of paying a non-cash distribution, the Directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

39.2.1 fixing the value of any assets;

39.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and

39.2.3 vesting any assets in trustees.

40 WAIVER OF DISTRIBUTIONS

40.1 Distribution Recipients may waive their entitlement to a dividend or other distribution payable in respect of a Share by giving the Company notice in writing to that effect, but if:

40.1.1 the Share has more than one Holder; or

40.1.2 more than one person is entitled to the Share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the Holders or persons otherwise entitled to the Share.

CAPITALISATION OF PROFITS

41 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS

41.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

41.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and

41.1.2 appropriate any sum which they so decide to capitalise (a **capitalised sum**) to the persons who would have been entitled to it if it were distributed by way of dividend (the **persons entitled**) and in the same proportions.

41.2 Capitalised sums must be applied:

41.2.1 on behalf of the persons entitled; and

41.2.2 in the same proportions as a dividend would have been distributed to them.

41.3 Any capitalised sum may be applied in paying up new Shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

- 41.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 41.5 Subject to the Articles, the Directors may:
- 41.5.1 apply capitalised sums in accordance with Articles 41.3 and 41.4 partly in one way and partly in another;
 - 41.5.2 make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article (including the issuing of fractional certificates or the making of cash payments); and
 - 41.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of Shares and debentures to them under this Article.

PART 4 - DECISION-MAKING BY SHAREHOLDERS

42 WRITTEN RESOLUTIONS

A resolution of the Shareholder (or class thereof) may be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Companies Act 2006.

ORGANISATION OF GENERAL MEETINGS

43 GENERAL MEETINGS

- 43.1 The Council shall appoint and may remove or replace, the Council Shareholder Committee (or any member thereof) in accordance with its constitution and will provide notice in writing to the Company, in accordance with section 323 of the Companies Act 2006, to act as the representative of the Council in accordance with the Articles.
- 43.2 Notice of a general meeting shall be given in Hard Copy Form, in Electronic Form or by means of a website, provided that the Company complies with any requirements relating to the giving of notice under the Companies Act 2006.
- 43.3 Any Director or the company secretary (if any) shall send notice of a general meeting to the Council Shareholder Committee, the Council, every Director and any other person required by law to be sent such notice.
- 43.4 Notice of a general meeting shall:
- 43.4.1 state the time, date and place of the meeting;
 - 43.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and
 - 43.4.3 be accompanied by a proxy form;
- notice of a general meeting need not be in writing.
- 43.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Directors are unaware shall not invalidate the proceedings of that meeting.

44 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 44.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 44.2 A person is able to exercise the right to vote at a general meeting when:
- 44.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - 44.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 44.3 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 44.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 44.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

45 QUORUM FOR GENERAL MEETINGS

No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting unless an authorised representative of each Shareholder (or in the case of the Council the Council Shareholder Committee) is present.

46 CHAIRING GENERAL MEETINGS

- 46.1 The person chairing a meeting in accordance with this Article is referred to as the **Chair of the Meeting**.
- 46.2 The Chair (if one is appointed under Article 13.2) shall chair general meetings if present and willing to do so.
- 46.3 If no Chair has been appointed under Article 13.2 or (if appointed) the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
- 46.3.1 the Directors present; or
 - 46.3.2 (if no Directors are present) the meeting,
- must appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the Meeting must be the first business of the meeting.

47 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS

- 47.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.
- 47.2 The Chair of the Meeting may permit other persons who are not:
- 47.2.1 Shareholders; or
 - 47.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

48 ADJOURNMENT

- 48.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the Chair of the meeting must adjourn it.
- 48.2 The Chair of the Meeting may adjourn a general meeting at which a quorum is present if:
- 48.2.1 the meeting consents to an adjournment; or
 - 48.2.2 it appears to the Chair of the Meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 48.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 48.4 When adjourning a general meeting, the Chair of the meeting must:
- 48.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Directors; and
 - 48.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 48.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 48.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
 - 48.5.2 containing the same information which such notice is required to contain.
- 48.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

49 VOTING: GENERAL

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

50 ERRORS AND DISPUTES

- 50.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 50.2 Any such objection must be referred to the Chair of the Meeting, whose decision is final.

51 POLL VOTES

- 51.1 A poll on a resolution may be demanded:
- 51.1.1 in advance of the general meeting where it is to be put to the vote, or
 - 51.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

- 51.2 A poll may be demanded by:
- 51.2.1 the Chair of the Meeting;
 - 51.2.2 the Directors;
 - 51.2.3 two or more persons having the right to vote on the resolution; or
 - 51.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.
- 51.3 A demand for a poll may be withdrawn if:
- 51.3.1 the poll has not yet been taken; and
 - 51.3.2 the Chair of the Meeting consents to the withdrawal.
- 51.4 Polls must be taken immediately and in such manner as the Chair of the Meeting directs.

52 CONTENT OF PROXY NOTICES

- 52.1 Proxies may only validly be appointed by a notice in writing (a **Proxy Notice**) which:
- 52.1.1 states the name and address of the Shareholder appointing the proxy;
 - 52.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
 - 52.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
 - 52.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 52.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 52.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 52.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- 52.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
 - 52.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

53 DELIVERY OF PROXY NOTICES

- 53.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid Proxy Notice has been delivered to the Company by or on behalf of that person.
- 53.2 An appointment under a Proxy Notice:
- 53.2.1 may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the Proxy Notice was given; and

53.2.2 shall be revoked if the person by whom or on whose behalf the Proxy Notice was given is present at the meeting or adjourned meeting to which it relates.

53.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

53.4 If a Proxy Notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

54 AMENDMENTS TO RESOLUTIONS

54.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

54.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chair of the Meeting may determine); and

54.1.2 the proposed amendment does not, in the reasonable opinion of the Chair of the Meeting, materially alter the scope of the resolution.

54.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

54.2.1 the Chair of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

54.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

54.3 If the Chair of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair of the Meeting's error does not invalidate the vote on that resolution.

PART 5 - ADMINISTRATIVE ARRANGEMENTS

55 MEANS OF COMMUNICATION TO BE USED

55.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.

55.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.

55.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

56 COMPANY SEALS

56.1 Any common seal may only be used by the authority of the Directors.

56.2 The Directors may decide by what means and in what form any common seal is to be used.

56.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a Document, the Document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

56.4 For the purposes of this Article, an authorised person is:

56.4.1 any Director;

56.4.2 the company secretary (if any); or

56.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

57 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

The Council and their authorised representatives or the Council Shareholder Committee shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company.

58 APPOINTMENT OF COMPANY SECRETARY

The Council may appoint (and remove) the company secretary by notice in writing to the Company.

59 PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS

The Directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries (other than a Director or former Director or shadow Director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that Subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

60 INDEMNITY

60.1 Subject to Article 60.2, a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

60.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated Company;

60.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

60.1.3 any other liability incurred by that Director as an officer of the Company or an associated Company.

60.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

60.3 In this Article:

60.3.1 companies are **associated** if one is a Subsidiary of the other or both are subsidiaries of the same body corporate; and

60.3.2 a **relevant Director** means any Director or former Director of the Company or an associated Company.

61 INSURANCE

61.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Director in respect of any relevant loss.

61.2 In this Article:

61.2.1 a **relevant Director** means any Director or former Director of the Company or an associated Company;

61.2.2 a **relevant loss** means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director's duties or powers in relation to the Company, any associated Company or any pension fund or employees' share scheme of the Company or associated Company; and

61.2.3 companies are **associated** if one is a Subsidiary of the other or both are subsidiaries of the same body corporate.

SCHEDULE 1- RESERVED MATTERS

Number	Reserved Matter
	Constitution of the company
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	Officers and Shareholders of the company
2	The appointment and the appointment terms (including any remuneration terms) of any of the Council Directors.
3	The appointment and the appointment terms (including any remuneration terms) of the chief executive officer.
4	The removal of any of the Council Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	Future direction and development of the company
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the company.
9	Adopting or amending the Business Plan of each respective company and any in-year changes or adopting or amending any long term financial strategy for the company.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council.
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services to be provided by the company to a third party not approved under the Business Plan.
13	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the company, other than the appointment of an agent to conduct an area of the business of a company.
14	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	Management of the business of the company
15	Changing the company's registered office.

Number	Reserved Matter
16	Changing the company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the company's assets, shares or income.
18	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the company.
20	Agreeing to enter into or entering into agreements or arrangements in respect of the hire/purchase or acquisition or disposal of any material assets by the company the total value of which exceeds £250,000 per annum.
21	Materially varying any arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the company.
23	Changing the company's auditors.
24	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
25	Changing the Financial Year of the company.
26	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).
27	Declare or pay any end of year dividend of the company (where applicable).
28	Entering into any borrowing, credit facility or investment arrangement (other than in the normal course of trading) from any third party that is not the Council.
29	Settling any legal matters and insurance claims in excess of £50,000.
30	Introducing any change to union recognition or representations arrangements of employees.
31	Establishing or amending any pension scheme for any director, officer, employee, former director, officer or employee, or any member of such person's family.

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Company Number 10385861

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

ALIGN PROPERTY PARTNERS LIMITED (the '**Company**')

7 May 2021

Under Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolution is passed as a special resolution (the '**Resolution**').

SPECIAL RESOLUTION

1. THAT the draft articles of association attached to this Resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the Company's existing articles of association.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, a person entitled to vote on the Resolution hereby irrevocably agrees to the Resolution:

Signed by the Corporate Representative
of NORTH YORKSHIRE COUNTY
COUNCIL:

.....

Date:

.....

NOTES:

1. If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning the signed version, either by hand or by post to: **Legal Services, County Hall, Northallerton, North Yorkshire, DL7 8AD.**

You may also return the Resolution by email to Sarah Morton, Legal Services – sarah.morton@northyorks.gov.uk

If you do not agree to the Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.

3. Unless by 4 June 2021 sufficient agreement is received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.

North Yorkshire County Council

Shareholder Committee

25 May 2021

Articles of Association for NYnet Limited

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 Purpose

- 1.1 To seek shareholder approval of revised Articles of Association of NYnet Limited.

2.0 Background

- 2.1 NYnet Limited was incorporated on 26 January 2007 as a private company limited by shares, and is a wholly owned subsidiary of the Council. The company was established to deliver broadband connectivity and other internet services across the public and private sector. As part of good governance, the companies and the Council have carried out a review of the governance documents of the company and wish to make a number of changes to incorporate best practice with regard to industry standards with regard to such Council owned companies.
- 2.2 The Company was established with Table A Articles of Association. This report considers bespoke Articles of Association which will assist the Council in demonstrating its control over the Company.
- 2.3 Following on from the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ("the 2020 Regulations"), which allowed for committee meetings to be held remotely, the County Council resolved at its meeting on 5 May 2021 that, for the present time, Committee business should be continued via the Chief Executive Officer making urgent decisions that would previously have been made by the Council's committees. This would be done under his emergency decision making powers in the Officers' Delegation Scheme, following consultation with other Officers and Members as appropriate and taking account of the Committee's views and recommendations.

3. The Teckal Exemption

- 3.1 The Council is a contracting authority for the purposes of the Public Contracts Regulations 2015 (the Regulations). Public contracts must be awarded in accordance with the Regulations; however, there are certain exemptions to this.
- 3.2 One of these exemptions is known as the Teckal test, which is set out in Regulation 12 of the Regulations. The basic test provides that a public contract awarded by a contracting authority to an entity, which is owned by it, falls outside of the procurement rules where all of the following conditions are fulfilled:
- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;**

- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

3.3 The first element of the Teckal test: "*Control*", is established where all of the following conditions are fulfilled:

- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or
- (b) the control is exercised by another legal person which is itself controlled in the same way by the contracting authority.

3.4 One clear way for a shareholder to demonstrate compliance with the 'control' element of the Teckal test is through the requirement for unanimous approval of the Reserved Matters in the Articles of Association.

3.5 NYnet Limited adopted Table A Articles of Association upon incorporation under the Companies Act 1985. Whilst the Company operates within the requirements of the Teckal test and is considered to be a Teckal compliant company, the proposed changes to the Articles of Association mean that the Council can clearly and easily demonstrate that it meets the 'control' limb of the Teckal test outlined above.

3.6 The Articles of Association contained at Appendix 1 are considered to exercise sufficient control over the company to be Teckal compliant.

3.7 On 17 May 2021 the directors of the company resolved to request that the Council as shareholder to pass the Written Resolution to enact these changes. The Written Resolution at Appendix 2 is the formal approval of the Articles of Association by the shareholder, which must be signed and sent to Companies House.

4.0 Recommendation

4.1 The Shareholder Committee is asked to recommend to the Chief Executive that under his emergency delegated powers he:

- (i) Approve the Articles of Association for NYnet Limited; and
- (ii) Agree the Written Resolution be signed by the Corporate Director of Strategic Resources on behalf of the Council as shareholder.

BARRY KHAN

Assistant Chief Executive (Legal and Democratic Services)

13 May 2021

Author of report: Sarah Morton, Senior Solicitor Commercial Contracts and Procurement
Presenter of report: Barry Khan, Assistant Chief Executive (Legal and Democratic Services)

Appendices:

Appendix 1 - Articles of Association

Appendix 2 –Written Resolution

THE COMPANIES ACT 1985 AND 1989

ARTICLES OF ASSOCIATION

- of -

NYNET LIMITED

Company Number : 06069791

A PRIVATE COMPANY LIMITED BY SHARES

COMPANIES ACTS 1985 AND 1989

A PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

- of -

NYNET LIMITED

PRELIMINARY

1.
 - (a) The Company is a Private Company and, subject as hereinafter provided and except where the same are varied or excluded by or inconsistent with these Articles, the regulations contained or incorporated by reference to Table A in the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 and the Companies Act 1985 (Electronic Communications) Order 2000 (hereinafter called "Table A") shall apply to the Company save insofar as they are excluded or varied hereby and such Regulations (save as so excluded or varied) and shall be deemed to form part of these Articles. References herein to regulations are to regulations in Table A unless otherwise stated.
 - (b) In these Articles the expression the Act means the Companies Act 1985, but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

DEFINITIONS

2. In these Articles unless the context otherwise requires:-

"Business Plan"	means the operational business plan and budget of the Company produced by the Board subject to such amendments as required by the Council and as adopted and amended in accordance with Article 10.B;
"Council"	means North Yorkshire County Council and any statutory successor;
"Council Director"	means a Director who is an office, member or employee of the Council;
"these Articles"	means the Articles of Association in their present form or as from time to time altered;
"the Board"	means the Board of Directors of the Company or a duly authorised committee thereof or the Directors present at a meeting of the Board of Directors of the Company or a duly authorised committee thereof, in each case at which a quorum is present;

"Independent Director" means a Director who is not a Council Director;

"Member" means a member of the Company; and

"Non-Director Officer" means, for the purposes of Article 25, any officer or auditor of the Company other than a Director;

"Reserved Matter" means any matter reserved by the Council as a reserved matter in accordance with Article 11A including the list of reserved matters at Schedule 1 to these Articles.

SHARE CAPITAL

3. The share capital of the Company is one Ordinary Share of £1.00 each.

SHARES

4.

- (a) The Directors are generally and unconditionally authorised for the purposes of Section 80 of the Act to exercise any power of the Company to allot and grant rights to subscribe for or convert securities into shares of the Company up to the amount of the authorised share capital with which the Company is incorporated at any time or times during the period of five years from the date of incorporation and the Directors may, after that period, allot any shares or grant any such rights under this authority in pursuance of an offer or agreement so to do made by the Company within that period. The authority hereby given may at any time (subject to the said Section 80) be renewed, revoked or varied by Ordinary Resolution of the Company in General Meeting.
- (b) All unissued shares or securities of the Company not comprising relevant securities shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to such persons, at such times, and on such terms as it thinks proper.
- (c) Pursuant to Section 91 of the Act, sub-section (1) of Section 89 and sub-sections (1) to (6) inclusive of Section 90 of the Act shall be excluded from applying to the Company.

LIEN

5. The lien conferred by Regulation 8 shall also attach to fully paid shares and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person, whether he shall be the sole registered holder thereof or shall be one of one or more joint holders for all moneys presently payable by him or his estate to the Company. Regulation 8 shall be modified accordingly.

FORFEITURE

6. The liability of any Member in default of payment of a call shall, if the Board so directs, also include any costs and expenses suffered or incurred by the Company in respect of such non-payment and the powers conferred on the Board by Regulation 18 and the provisions of Regulation 21 shall be extended accordingly.

TRANSFER OF SHARES

7. The Board may, in its absolute discretion, and without giving any reason therefore, decline to register a transfer of any share, whether or not it is a fully paid share. Regulation 24 shall not apply to the Company.

TRANSMISSION OF SHARES

8. The Board may at any time give notice by electronic means or otherwise requiring any person entitled to a share by reason of the death or bankruptcy of the holder thereof to elect either to be registered himself in respect of the share or to transfer the share and if the notice is not complied with within sixty days the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with. Regulation 31 shall be modified accordingly.

PROCEEDINGS AT GENERAL MEETINGS

9. If within half an hour from the time appointed for a general meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed for that meeting, the meeting shall be dissolved. Regulation 41 shall not apply to the Company.

A poll may be demanded at any general meeting by any member present in person or by proxy and entitled to vote. Regulation 46 shall be modified accordingly.

10. For so long as the Company has only a sole Member:-
- (i) that Member shall constitute a quorum if present in person or by proxy or, if that Member is a corporation, by a duly authorised representative; and
 - (ii) any decisions or actions made or taken by that Member which are ordinarily required to be made or taken in General Meeting of the Company or by means of a written resolution, that decision shall be as valid and effectual as if agreed by the Company in General Meeting save that this paragraph shall not apply to resolutions passed pursuant to Sections 303 and 391 of the Act.
 - (iii) any decision taken by a sole Member pursuant to paragraph (ii) above shall be recorded in writing and delivered by that Member to the Company for entry in the Company's Minute Book.

RESERVED MATTERS

- 10A. Insofar as a matter is a Reserved Matter relating to the Company, the Board shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

BUSINESS PLAN

- 10B. The Board shall deliver the business of the Company in accordance with any current Business Plan approved in writing by the Council.

PROVISION OF INFORMATION

10C

- a) The Company shall provide to the Council:
- (i) draft annual accounts in accordance with a timetable as agreed with the Council;
 - (ii) final audited annual accounts by 31 December in each financial year;
 - (iii) minutes of all Board meetings within 20 business days after the relevant Board meeting to which they relate;
 - (iv) all information required to be provided pursuant to any other contractual commitments, within a timescale agreed with the Council; and
 - (v) any other information reasonably required by the Council from time to time.
- b) The Company shall respond promptly to all reasonable requests from the Council for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Council may require.
- c) The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.
- d) The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.
- e) The Company shall immediately notify the Council of:
- (i) any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company; and
 - (ii) any matter of which it is aware which may bring the Company or the Council into disrepute.

DELEGATION OF DIRECTORS' POWERS

11. Any committee of the Board may consist of one or more co-opted persons other than Directors on whom voting rights may be conferred as members of the committee but so that:-
- (i) the number of co-opted members shall be less than one-half of the total number of members of the committee; and
 - (ii) a resolution of the committee shall not be effective unless a majority of the members of the committee present at the meeting are Directors.

Regulation 72 shall be modified accordingly.

APPOINTMENT AND RETIREMENT OF DIRECTORS

12.

- (a) The board of Directors shall comprise of:
 - (i) up to 4 Council Directors; and
 - (ii) up to 3 Independent Directors.
- (b) Subject to the Articles, any appointment(s) or termination(s) of Directors shall be effected by the Council, giving notice in writing to the Company, with the date of appointment or termination effective on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- (c) The minimum number of Directors shall be three and the maximum shall be seven. Regulations 64, and 90 shall be modified (and all other Regulations in these Articles relating to Directors shall be construed) accordingly.
- (d) The Directors shall not be subject to retirement by rotation and accordingly:-
 - (i) Regulations 73 to 75 inclusive, Regulation 80 and the last sentence of Regulation 84 shall not apply to the Company;
 - (ii) Regulation 76 shall apply but with the deletion of the words "other than a Director retiring by rotation";
 - (iii) Regulation 77 shall apply but with the deletion of the words in brackets "(other than a Director retiring by rotation at the meeting)";
 - (iv) Regulation 78 shall apply but with the deletion of the words "and may also determine the rotation in which any additional Directors are to retire"; and
 - (v) Regulation 79 shall apply but with the deletion of the words "and shall not be taken into account in determining the Directors who are to retire by rotation at the meeting".

12A. TERMINATION OF A DIRECTOR'S APPOINTMENT

- a) A person ceases to be a Director as soon as:
 - (i) the Council notifies the Company that the individual is to be removed as a Director;
 - (ii) in the case of a Council Director, that individual ceases to be an officer, member or employee of the Council;
 - (iii) that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
 - (iv) a bankruptcy order is made against that person;

(v) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(vi) a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or

(vii) notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms.

13. The personal representatives of any person occupying the position of both a sole director and sole member of the Company upon his death shall be entitled, on serving notice in writing at the Company's Registered Office, to appoint a person as a Director. Any such appointment shall be deemed for all purposes to be as valid as an appointment made in accordance with the provisions of Regulation 78 as amended.

BORROWING POWERS

14. The Directors may exercise all the powers of the Company to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and subject (in the case of any security convertible into shares) to Section 80 of the Act to grant any mortgage, charge or standard security over its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

DIRECTORS

15. The Directors shall be entitled to such remuneration (if any) by way of fee as shall from time to time be determined by the Company in General Meeting. Unless and until so determined, remuneration shall be at such rate as the Board shall from time to time determine. Such remuneration shall be deemed to accrue from day to day. The Directors (including alternate Directors) shall also be entitled to be paid their reasonable travelling, hotel and other expenses of attending and returning from meetings of the Company or otherwise incurred while engaged on the business of the Company or in the discharge of their duties. Regulations 82 and 83 shall not apply to the Company.
16. Any Director, who, by request, performs special services or goes or resides abroad for any purposes of the Company or who otherwise performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director shall receive such extra remuneration by way of salary, percentage of profits or otherwise as the Board may determine which shall be charged as part of the Company's ordinary working expenses.
17. Subject to the provisions of the Act and provided that he has disclosed to the Directors the nature and extent of any material interest of his, a Director notwithstanding his office:-
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is in any way interested;

- (b) may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
- (c) may, or any firm or company of which he is a member or Director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
- (d) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from such office, service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- (e) shall be entitled to vote and be counted in the quorum on any matter concerning paragraphs (a) and (d) above.

For the purposes of this Article:-

- (i) a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified;
- (ii) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
- (iii) an interest of a person who is, for any purpose of the Act (excluding any statutory modification not in force when this Article becomes binding on the Company), connected with a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director without prejudice to any interest which the alternate Director has otherwise.

Regulations 86, and 94 to 96 inclusive shall not apply to the

Company:-

PROCEEDINGS OF DIRECTORS

- 18. An alternate Director who is himself a Director and/or who acts as an alternate Director for more than one Director shall be entitled, in the absence of his appointor(s), to a separate vote or votes on behalf of his appointor(s) in addition (if he is himself a Director) to his own vote. Regulation 88 shall be modified accordingly.
- 18A. The Directors shall appoint an Independent Director to be the chair of the board of directors and may at any time remove him from office. Regulation 91 shall apply but with the deletion of the first sentence.
- 19. Any Director enabled to participate in the proceedings of a meeting by means of a telephone or other communication device which allows all the other Directors present at such meeting whether in person or by means of such communication device to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (whether in person or by means of such

type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

20. A meeting at which one or more of the Directors attends by such means as specified in Article 19 is deemed to be held at such place as the Directors shall at that meeting resolve. In the absence of a resolution as aforesaid, the meeting shall be deemed to be held at the place, if any, where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the chair of the meeting is physically present.

DIVIDENDS

21. Dividends shall be declared and paid according to the amounts paid up or credited as paid up on the shares on which the dividend is paid. Regulation 104 shall be construed accordingly.

NOTICES

22. A notice served by post, fax, or electronic mail shall be deemed to be given at the expiration of twenty four hours (or, where second class mail is employed, forty-eight hours) after the time when the cover containing the same is posted, or transmitted. Regulation 115 shall be modified accordingly.

SEAL

23. The Directors shall decide whether the company shall have a seal and if so shall provide for the safe custody of the Seal and of any official Seal for use abroad pursuant to the Statutes, and such Seals shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf, and every instrument to which the Seal shall be affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose. Regulation 101 of Table A shall not apply.

SHARE CERTIFICATES

24. In the event that the Directors decide that the Company shall not have a seal then share certificates or other documents issued by the Company may be signed by a director and secretary of the Company, or two directors of the Company, and expressed (in whatever form of words) to be executed by the Company and shall have the same effect as if executed under the common seal of the Company and Regulation 6 of Table A shall be modified accordingly.

INDEMNITY

- 25.
- (a) A Director shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him:
 - (i) in defending any civil proceedings (unless judgment is given against the Director and the judgment is final);
 - (ii) in defending any criminal proceedings (unless the Director is convicted and the conviction is final); and

- (iii) in connection with any application for relief from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company (unless the court refuses to grant the director relief, and the refusal is final),

but this Article shall only have effect in so far as its provisions are not avoided by Sections 309A and 309B of the Act.

- (b) A judgment, conviction or refusal of relief becomes final if:
 - (i) the period for bringing an appeal (or any further appeal) has ended; and
any appeal brought is determined, abandoned or otherwise ceases to have effect.
- (c) Every director shall be entitled to have funds provided to him by the Company to meet expenditure incurred or to be incurred in any proceedings (whether civil or criminal) brought by any party which relate to anything done or omitted or alleged to have been done or omitted by him as a director, provided that he will be obliged to repay such amounts no later than:
 - (i) in the event he is convicted in proceedings, the date when the conviction becomes final;
 - (ii) in the event of judgment being given against him in proceedings, the date when the judgment becomes final; or
 - (iii) in the event of the court refusing to grant him relief on any application under sections 144(3) or (4) or 727 of the Act, the date when refusal becomes final.
- (d) Every Non-Director Officer of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any negligence, default, breach of duty or breach of trust on his part or in connection with any application under Section 727 in which relief is granted to him by the Court and no Non-Director Officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto but this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
- (e) The Directors shall have power to purchase and maintain for any Director or Non-Director Officer of the Company insurance against any such liability as is referred to in Sections 309A(1) or 310(1) of the Act from and after the bringing into force of Section 136 of the Companies Act 1989.
- (f) This Article is without prejudice to any other indemnity to which a Director may be entitled.

Regulation 118 shall not apply to the Company.

SCHEDULE 1 - RESERVED MATTERS

Number	Reserved Matter
	Constitution of the company
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.
	Officers and Shareholders of the company
2	The appointment and the appointment terms (including any remuneration terms) of any of the Council Directors.
3	The appointment and the appointment terms (including any remuneration terms) of the chief executive officer.
4	The removal of any of the Council Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	Future direction and development of the company
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the company.
9	Adopting or amending the Business Plan of each respective company and any in-year changes or adopting or amending any long term financial strategy for the company.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council.
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services to be provided by the company to a third party not approved under the Business Plan.
13	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the company, other than the appointment of an agent to conduct an area of the business of a company.
14	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	Management of the business of the company

Number	Reserved Matter
15	Changing the company's registered office.
16	Changing the company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the company's assets, shares or income.
18	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the company.
20	Agreeing to enter into or entering into agreements or arrangements in respect of the hire/purchase or acquisition of any material assets by the company the total value of which exceeds £1,000,000 per annum.
21	Agreeing to enter into or entering into agreements or arrangements in respect of the disposal of any material assets by the company the total value of which exceeds £250,000 per annum.
22	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £100,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a company.
23	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the company.
24	Changing the company's auditors.
25	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
26	Changing the Financial Year of the company.
27	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).
28	Declare or pay any end of year dividend of the company (where applicable).
29	Entering into any borrowing, credit facility or investment arrangement (other than in the normal course of trading) from any third party that is not the Council.
230	Settling any legal matters and insurance claims in excess of £50,000.

Number	Reserved Matter
31	Introducing any change to union recognition or representations arrangements of employees.
32	Establishing or amending any pension scheme for any director, officer, employee, former director, officer or employee, or any member of such person's family.
33	Tenders for work with an estimated total value in excess of £1,000,000.

Company Number 06069791

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

NYNET LIMITED (the 'Company')

17 May 2021

Under Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolution is passed as a special resolution (the 'Resolution').

SPECIAL RESOLUTION

- 1. THAT the draft articles of association attached to this Resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the Company's existing articles of association.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, a person entitled to vote on the Resolution hereby irrevocably agrees to the Resolution:

Signed by the Corporate Representative
of NORTH YORKSHIRE COUNTY
COUNCIL:

.....

Date:

.....

NOTES:

1. If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning the signed version, either by hand or by post to: **Legal Services, County Hall, Northallerton, North Yorkshire, DL7 8AD.**

You may also return the Resolution by email to Sarah Morton, Legal Services – sarah.morton@northyorks.gov.uk

If you do not agree to the Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.

3. Unless by 11 June 2021 sufficient agreement is received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.

Shareholder Committee Work Programme

Meeting Date	Items of Business
23 April 2019	<ol style="list-style-type: none"> 1. Company Updates & 2019/20 Business Plans for the following companies: Align Property Partners First North Law Yorwaste Brierley Homes 2. Work Programme 2018/19
28 May 2019	<ol style="list-style-type: none"> 1. Company Updates & 2019/20 Business Plans for the following companies: Veritau NYES NYnet 2. Work Programme 2019/20
10 September 2019	<ol style="list-style-type: none"> 1. Brierley Group 2018/19 Outturn Reports 2. Brierley Group Q1 2019/20 Performance Report 3. Work Programme 2019/20
6 November 2019	<ol style="list-style-type: none"> 1. Veritau Business Case for Expansion 2. Work Programme 2019/20
21 January 2020	<ol style="list-style-type: none"> 1. Brierley Group Q2 2019/20 Performance Report 2. Work Programme 2020/21
28 April 2020 Meeting Cancelled	<ol style="list-style-type: none"> 1. Brierley Group Q3 2019/20 Performance Report 2. Company Updates & 2020/21 Business Plans for the following companies: Brierley Homes First North Law Align Property Partners NYnet
26 May 2020 Meeting Cancelled	<ol style="list-style-type: none"> 1. Company Updates & 2020/21 Business Plans for the following companies: Yorwaste Veritau NYES 2. Work Programme 2020/21

29 September 2020	<ol style="list-style-type: none"> 1. Quarter 4 2019-2020 Brierley Group Report & Summary of Brierley Group Business Plans 2. Articles of Association for North Yorkshire Highways Ltd 3. Work Programme 2020/21
19 January 2021	Meeting Cancelled
27 April 2021	Meeting Cancelled
25 May 2021	<ol style="list-style-type: none"> 1. Brierley Group Annual Report 2020/21 & Brierley Group Business Plans 2. Align Property Partners – Articles of Association 3. NYnet Ltd – Articles of Association 4. Work Programme 2021/22
14 September 2021	<ol style="list-style-type: none"> 1. Brierley Group Q1 2021/22 Performance Report 2. Work Programme 2021/22
18 January 2022	<ol style="list-style-type: none"> 1. Brierley Group Q2 2021/22 Performance Report 2. Work Programme 2021/22