

## **Agenda**

- Meeting:** Shareholder Committee
- Members:** Councillors Carl Les (Chairman), Gareth Dadd and Derek Bastiman.
- Date:** Tuesday 19th March 2024
- Time:** 12.30 pm
- Venue:** Room 3, County Hall, Northallerton

Members of the public are entitled to attend this meeting as observers for all those items taken in open session. This meeting is being held as an in-person meeting and is also 'hybrid', which enables people to attend the meeting remotely using MS Teams. Please contact the Democratic Services Officer whose contact details are below if you would like to find out more.

Recording is allowed at Council, committee and sub-committee meetings which are open to the public, please give due regard to the Council's protocol on audio/visual recording and photography at public meetings, a copy of which is available to download below. Anyone wishing to record is asked to contact, prior to the start of the meeting, the Democratic Services Officer whose contact details are below. We ask that any recording is clearly visible to anyone at the meeting and that it is non-disruptive. <http://democracy.northyorks.gov.uk/>

### **Business**

1. **Apologies for Absence**
2. **Minutes of the meeting held on 14 November 2023** (Pages 5 - 6)
3. **Declarations of Interest**  
All Members are invited to declare at this point any interests they have in items appearing on this agenda, including the nature of those interests.
4. **Public Participation**  
Members of the public may ask questions or make statements at this meeting if they have given notice to Elizabeth Jackson, Principal Democratic Services Officer, [Elizabeth.jackson@northyorks.gov.uk](mailto:Elizabeth.jackson@northyorks.gov.uk) and supplied the text by midday on Thursday 14 March 2024, 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 Chair who will instruct anyone who may be taking a recording to cease while you speak.

**5. Brierley Group Quarter 3 2023/24 Performance Report (Pages 7 - 16)**

**Recommendation**

For the Shareholder Committee to note the report and the Brierley Group Q3 Financial Performance for the 2023/24 year.

**6. Commercial Governance Review (Pages 17 - 28)**

**Recommendations**

Shareholder Committee are requested to:

- i) approve the recommendations as set out in each section of the report and as summarised in paragraph 11;
- ii) delegate the approval of the new conflicts of interest policy to the Assistant Chief Executive – Legal and Democratic Services; and
- iii) delegate all other necessary steps to secure the implementation of all other recommendations set out in this report to the Corporate Director, Resources.

**7. Border to Coast Governance Documents (Pages 29 - 98)**

**Recommendations**

The Shareholder Committee are requested to:

- i) approve the updated Border to Coast Pensions Partnership Limited governance documents at Appendix 1 and Appendix 2, being the Shareholder Agreement and the Pension Cost Recharge Agreement;
- ii) delegate the Council entering into the two agreements to the Assistant Chief Executive, Legal and Democratic Services. delegate the nomination of an appropriate shareholder representative on behalf of the Council to the Council's Chief Executive Officer.

**8. Work Programme 2024/25 (Pages 99 - 100)**

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

**9. Any Other Items**

Any other items which the Chair agrees should be considered as a matter of urgency because of special circumstances

**10. Date of Next Meeting - 16 July 2024**

**Members are reminded that in order to expedite business at the meeting and enable Officers to adapt their presentations to address areas causing difficulty, they are encouraged to contact Officers prior to the meeting with questions on technical issues in reports.**

**Contact Details**

For enquiries relating to this agenda please contact Elizabeth Jackson, Principal Democratic Services Officer

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Barry Khan  
Assistant Chief Executive  
(Legal and Democratic Services)

County Hall  
Northallerton

Monday 11 March 2024

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## North Yorkshire County Council

### Shareholder Committee

Minutes of the meeting held on Tuesday, 14th November 2023 commencing at 12.49 pm.

County Councillor Carl Les in the Chair, plus County Councillors Gareth Dadd and Derek Bastiman.

In attendance: County Councillor George Jabbour.

Officers present: Richard Flinton, Gary Fielding, Barry Khan and Kerry Metcalfe.

Apologies: None

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**Copies of all documents considered are in the Minute Book**

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#### **24 Apologies for Absence**

#### **25 Minutes of the meeting held on 21 March 2023**

##### **Resolved –**

That the Minutes of the meeting held on 21 March 2023, having been printed and circulated, be confirmed as read and signed by the Chairman as a correct record.

#### **26 Declarations of Interest**

There were no declarations interests.

#### **27 Public Participation**

There were no questions or statements from the public.

#### **28 Brierley Group Quarter 1 2023/24 Performance Report**

Considered - A report of the Assistant Director for Commercial, Property & Procurement, providing an overview of the entities forming the Brierley Group and an update on the Brierley Group's Quarter 1 financial performance for 2023/24.

Kerry Metcalfe, Assistant Director for Commercial, Property & Procurement introduced the report, providing an overview of performance and highlighting the first quarter achievements and challenges for the individual companies. She drew members' attention specifically to:

- The overall strong performance of the Group;
- The forecasted pre-tax profits for each of the companies;
- The improving position of NYES's trading results;
- The £1.75m in sales by Brierley Homes, exceeding the business case projections;
- The positive feedback from visitors to Maple Park

- The current challenges, including resourcing, recruitment and retention of professional staff and inflationary cost pressures;
- The current high electricity and gas prices, and the potential risk associated with any future drop in those prices;
- The potential issue in regard to growing an external client base in line with market demand for Align Property Partners due to their Teckal status;

Councillor Gareth Dadd acknowledged the challenges faced by the Council in recent years and was therefore pleased to note the overall strong performance of the Group. In particular in drew attention to the success of Align Property Partners, noting that the concerns raised by a number of ex-councillors in regard to both APP and Brierley Homes had proven to be incorrect.

The Chair thanked the officer for the update, and it was

**Resolved** – That the report be noted

## **29 Leeds City Region Revolving Investment Fund Update**

Considered - A report of the Assistant Chief Executive Legal & Democratic Services providing an update on the decision taken to extend the partnership agreement for Leeds City Region Revolving Investment Fund.

Barry Khan, Assistant Chief Executive Legal & Democratic Services introduced the report confirming that a decision had been taken in July 2023 to extend the partnership agreement for a further 10 years to July 2033 because the Fund was considered to be beneficial for the short term whilst the Council considered its options going forward.

It was noted that at that time, due to time constraints it was necessary for the decision to be taken by a Shareholder representative rather than the full Committee.

Members noted the Council became a partner as a result of LGR and that it was still possible to withdraw from the partnership if the Council gave three months' notice. Members also noted that no loans had been defaulted on since the RIF's inception.

**Resolved** – That:

- i. The decision taken by the Shareholder representative on 28 July 2023 be noted
- ii. The decision be approved

## **30 Work Programme**

Members considered and endorsed the work programme for the Committee for the remainder of 2023/24.

## **31 Date of Next Meeting - 19 March 2024**

The meeting concluded at 1.03 pm.

## North Yorkshire Council

### Shareholder Committee

19 March 2023

#### Brierley Group 2023/24 Quarter 3 Financial Performance report.

#### Report of the Assistant Director – Commercial, Property and Procurement

##### 1.0 Purpose of the Report

1.1 To provide Shareholder Committee with:

- an update on the Brierley Group's Q3 Financial Performance.

##### 2.0 RECOMMENDATION

2.1 For the Shareholder Committee to note the report and the Brierley Group Q3 Financial Performance for the 2023/24 year.

### 3 Brierley Group Headlines

- 3.1 The Q3 performance across the Brierley Group shows strong performance in most areas, with the majority of organisations projecting higher pre-tax profits than budget in both the year to date and forecast outturn, with the exception of Brierley Homes and Brimhams Active. Overall, the 2023/24 group outturn projection shows a **pre-tax profit of £3.534m** against a budget of £3.786m. Although the forecast outturn position represents a £252k adverse variance against original budget estimate the projected pre-tax profit does still represent a healthy commercial return across the Group for the year.
- 3.2 The projected outturn position at Q3 compares to a reported projected pre-tax profit of £4.188m at Q1; representing a deterioration in the profit projections of £654k throughout the period. This is driven by material changes to the in-year forecast for Brierley Homes, which has partially been offset by improved projections across other entities, and in particular Align Property Partners and Yorwaste.
- 3.3 The movement in the projected outturn position for Brierley Homes for 23/24 is driven principally by delays to sales at the Great Ouseburn and Whorlton Meadows sites, along with additional costs being incurred to complete the Marton cum Grafton site. The forward development plan for Brierley Homes continues to be refined, with commencement dates on several pipeline sites being pushed back into 2024/25 and 2025/26. This has resulted in the bulk of the projected reduction in profit for 2023/24 compared to budget and Q1, with projected sales revenue being moved into later years. Re-profiled profit projections, based on the current pipeline of projects, anticipate that profits of £2.8m will be generated by Brierley Homes over the three financial years to 2026/27, however this projection could be materially impacted by future fluctuations in areas such as borrowing rates and house prices.
- 3.4 The forecasted loss for Brimham Active as at Q3 stands at £388k, which represents a slight increase in comparison to the Q1 projection of £330k. The loss identified in Q1 was primarily due to uncontrollable delays in the facility development programme which impacted in the company's ability to generate income from the new and refurbished

facilities plus inflationary cost pressures; the deterioration between Q1 and Q3 is attributed to further amendments to the impact on income as a result of the delays. Brimham Active's trading operations relate solely to running council owned leisure facilities in return for a financial subsidy, therefore this reported 'loss' should be seen as a cost of operating Council owned leisure facilities as opposed to being a true commercial loss.

- 3.5 Align Property, Yorwaste and Bracewell Homes are showing strong financial performance and are set to deliver significant pre-tax profits in excess of £1m per entity within the Group.
- 3.6 North Yorkshire Highways and NYC continue to work together to ensure efficiencies are maximised particularly in relation to road surface dressing works, filling potholes and treating roads for winter. Compliance to ISO standards was achieved in December 2023 which allows NYH to tender for other public sector works and commercial opportunities in addition to providing a framework for good management practices and continual improvement.
- 3.7 Increased interest rates continue to impact on trading projections within the Group. This acts to increase the interest payable within a number of the loan-financed companies. It is anticipated that £3.348m loan financing interest will be payable across the Group companies in the 23/24 year, which delivers shareholder value back to NYC in the Council's capacity as lender.
- 3.8 The Group continues to present strong shareholder value to NYCC, with £11.949m deliverable in 2023/24 through group profitability, surpluses achieved via Service Level Agreements, loan interest and the financial benefit of the Allerton Waste Recovery Park contractual agreement.

#### **4. Current Challenges**

- 4.1 The main challenges within the Group relate to resourcing, recruitment and retention of professional staff, and inflationary cost pressures.
- 4.2 The labour market continues to be very difficult in all sectors, limiting a lot of businesses ability to expand. Unemployment remains unchanged at 4.2% in the 3 months to November 2023 with a significant rise in the number of economically inactive people, leading to vacancies across the portfolio.
- 4.3 Resourcing issues within the Brierley Group are exacerbated by the ongoing workload pressures arising from Local Government Reorganisation and a lack of capacity within the Council's professional support service teams to assist with the development of growth plans across the Group.
- 4.4 Yorwaste has continued its recent strong financial performance into Q3 of the 2023/24 year with an increase in revenue due to landfill gas revenues. It is expected that prices will return to more "normal" levels in 2024/25 as electricity prices reduce, which will have a significant negative effect on future year revenue projections for the Company. This, along with a number of other challenges, will result in a significant forward challenge for the Company from 2024/25 onwards.
- 4.5 Brierley Homes has adopted a flexible procurement approach that allows the business to manage construction costs and appoint best-fit contractors. Previous viability challenges presented by cost inflation in the Construction sector have been successfully mitigated by a move to a direct contracting model for the sites presently under active construction. The expansion of the current development pipeline to four active sites, and a further six in the extended pipeline, will bring its own challenges across a range of areas, including the commissioning and active management of multiple sub-contractors, coupled with a substantial increase in transaction volumes.



- 4.6 General inflation (RPI) is currently 4.9%, down from highs of 14% in November 2022. Inflation has had substantial impacts across all companies with particular impacts on loan interest, utilities and overheads. Mortgage rate fluctuations continue to present a risk to the residential housing sector as a whole.

## 5 Current and future areas of development

- 5.1 At North Yorkshire Highways (NYH) efficiencies in gully cleaning are being robustly managed with the appointment of a champion role that will have operational responsibility for maximising the achievement of the gully cleaning programme and NYH are working with North Yorkshire Council colleagues to prioritise areas. NYH and North Yorkshire Council continue to work together to ensure that works order information is accurate, and does not result in unnecessary delay in rectifying identified defects.
- 5.2 Yorwaste continues to explore options to maximise current year landfill gas revenues through continued investment in well optimisation and to review the potential for investment in solar to mitigate the impact of the future increases in electricity costs. The Company's in-house sales team has been strengthened to mitigate attrition in the current challenging market conditions and also drive revenue growth. Several options are also being progressed to optimise asset maintenance and servicing to improve uptime and reduce costs.
- 5.3 Many companies are undertaking initiatives to drive cost efficiencies and address recruitment issues as well as development of future sales pipelines.

## 6 2023/24 Q3 Brierley Group Financial Summary

- 6.1 The following tables set out the 2023/24 outturn financial position for North Yorkshire Council's share of the Brierley Group, and the total value to NYC as shareholder of the Brierley Group companies.

**Table 1 – Brierley Group: Forecast Variance to Budget**

Brierley Group	Q3 Performance 2023/24	Q3 Budget 2023/24	Q3 Variance 2023/24	Full Year Forecast at Q3 - 2023/24	Full Year Budget 2023/24	Full Year Variance 2023/24	Full Year Forecast at Q1 - 2023/24	Movement between Q1 and Q3
	£,000	£,000	£,000	£,000	£,000	£,000	£,000	£,000
Revenue	115,362	113,113	2,249	161,568	164,484	(2,916)	167,501	(5,933)
Cost of Sale/Service	(96,280)	(94,649)	(1,631)	(131,549)	(133,899)	2,351	(136,653)	5,104
Gross Profit	19,082	18,464	618	30,020	30,585	(565)	30,848	(828)
Overheads & Other Costs	(13,853)	(14,104)	251	(24,797)	(24,304)	(493)	(24,125)	(672)
Other Trading Income/(Loss)	(8)	43	(51)	(58)	(453)	394	187	(245)
Other Gains/(Losses)	1,508	1,188	320	1,585	1,130	455	502	1,083
Operating Profit	6,730	5,591	1,139	6,750	6,958	(208)	7,412	(662)
Finance Income	98	57	41	133	12	121	14	119
Profit before Interest & Tax	6,827	5,648	1,180	6,882	6,970	(88)	7,426	(544)
Interest Paid	(2,413)	(2,289)	(123)	(3,348)	(3,184)	(164)	(3,238)	(110)
Tax (Expense)/Surplus								
Profit before Tax (NYC% Shareholding)	4,415	3,358	1,057	3,534	3,786	(252)	4,188	(654)

**Table 2 – Forecast Variance to Budget by organisation**

Company	Q3 Performance 2023/24	Q3 Budget 2023/24	Q3 Variance 2023/24	Full Year Forecast at Q3 - 2023/24	Full Year Budget 2023/24	Full Year Variance 2023/24	Full Year Forecast at Q1 - 2023/24	Movement between Q1 and Q3
	£,000	£,000	£,000	£,000	£,000	£,000	£,000	£,000
NYnet	310	278	32	394	376	18	347	47
First North Law	13	8	5	11	11	-	10	1
Brierley Homes	(320)	136	(456)	(739)	959	(1,698)	959	(1,698)
Align PP	1,060	428	632	1,191	700	491	700	491
Yorwaste	890	175	715	1,083	78	1,005	652	431
Veritau	19	11	8	19	14	5	51	(32)
NY Highways	38	14	24	45	19	26	26	19
Bracewell Homes	1,522	1,167	355	1,557	1,519	38	1,519	38
CNDCL	58	19	39	19	7	12	-	19
<b>Total (NYC % Shareholding) External companies</b>	<b>3,590</b>	<b>2,236</b>	<b>1,354</b>	<b>3,580</b>	<b>3,683</b>	<b>(103)</b>	<b>4,264</b>	<b>(686)</b>
NYES	521	462	59	109	31	78	20	89
Maple Park	405	377	28	233	72	161	233	-
Brimhams Active	(102)	282	(384)	(388)	-	(388)	(330)	(58)
<b>Total (NYC % Shareholding) all</b>	<b>4,415</b>	<b>3,358</b>	<b>1,057</b>	<b>3,534</b>	<b>3,786</b>	<b>(252)</b>	<b>4,188</b>	<b>(654)</b>

**Table 3 – Brierley Group Shareholder Value**

Projected Shareholder Value	Total NYC
<b>Financial Year:</b>	<b>23-24</b>
<b>Value</b>	<b>£000</b>
Profit / (Loss) before Tax	3,534
NYCC Support Service Contracts	477
NYCC Loan Financing Interest	3,113
Other Deliverable Shareholder Value	4,825
<b>Total</b>	<b>11,949</b>

- 6.2 Tables 1 and 2 show a projected year-end trading profit before tax across the Group of £3.534m against a budget of £3.786m for the 2023/24 year; representing a £252k adverse variance. Although the forecast outturn position represents an adverse variance against original budget estimate the projected pre-tax profit does still represent a healthy commercial return across the Group for the year.
- 6.3 The projected outturn position at Q3 compares to a reported projected pre-tax profit of £4.188m at Q1; representing a deterioration in the profit projections of £654k throughout the period. This, along with the adverse variation against budget, is driven by material changes in the in-year financial forecast for Brierley Homes, which has partially been offset by improved projections across other entities, and in particular Align Property Partners and Yorwaste.
- 6.4 The movement in the projected outturn position for Brierley Homes for 23/24 is driven principally by delays to sales at two sites, along with additional costs being incurred to complete the Marton cum Grafton site. The forward development plan for Brierley Homes continues to be further refined, with commencement dates on several pipeline sites being pushed back into 2024/25 and 2025/26. Re-profiled profit projections, based on the current pipeline of projects, anticipate that profits of £2.8m will be generated by Brierley Homes over the three financial years to 2026/27.

- 6.5 A £388k forecasted loss is projected for Brimhams Active. This loss is primarily due to uncontrollable delays in the facility development programme, which delayed the opening date of two facilities and impacted on the income generation potential at each site within the financial year.
- 6.6 All other entities are showing a forecasted profit for the 2023/24 year, with Yorwaste and Align Property profits being notably higher than budget.
- 6.7 Details by entity can be found in Appendix A.

**APPENDICES:**

Appendix A – Brierley Group - Financial Performance update by entity

Kerry Metcalfe  
**Assistant Director, Commercial, Property and Procurement**  
**Corporate Director - Resources**

**Date :** 05 March 2023

Presenter of Report – Kerry Metcalfe - Assistant Director ([kerry.metcalfe@northyorks.gov.uk](mailto:kerry.metcalfe@northyorks.gov.uk))

**Note:** Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

**FINANCIAL PERFORMANCE BY ENTITY****North Yorkshire Education Services (NYES)**

NYES is projected to realise a gross profit of £1.86m in FYE 2024, which will be offset by operating expenses totalling £1.77m (comprising hub costs of £0.90m and overheads £0.87m). Consequently, the forecast net profit stands at £109k which is £78k higher than budget and £89k higher than Q1.

As detailed in the Q1 report 2022/23 was a particularly difficult trading year for NYES, with the year-end position showing a loss of £566k after making allowance for central core overheads. The forecast outturn position currently projected for the 23/24 year therefore represents a significant improvement against last year's outturn position.

The UK's unemployment rate was largely unchanged at 4.2% in the 3 months to November 2023. Vacancies continue to fall, but still remain above pre-pandemic levels. The unwinding of the tightness in the UK labour market is expected to continue in 2024, easing the challenge of workforce recruitment and retention for our services that has been a persistent obstacle in delivering a sustainable and high-quality offering.

LGR has had an impact on internal services which fulfil core council duties as well as commercial functions. Combined with the difficulties in recruiting staff, resources are having to be diverted to supporting the ongoing transition to the new authority, and this is likely to continue for the next 9 months.

The NYES hub has undergone a restructure to produce a leaner structure, with a forecasted expenditure of £0.9m which is only slightly higher than last year. Given the significant level of pay inflation, this has been achieved by holding staff vacancies wherever possible, in addition to a reduced spend on physical sales and marketing activity, car allowances, event marketing and conference fees.

The focus of NYES will remain on keeping a tight control of costs (external and internal) and concentrating development on key areas where there is a strategic and/or financial advantage to the council.

**NYnet**

The Q3 forecast indicates a £394k profit before tax, representing an increase of £47k from Q1. Connectivity remains the largest contributor to sales revenue, but diversification plans are coming to fruition and NYnet have seen a steady increase in orders from private sector customers.

Higher than budgeted sales on the diversified portfolio have also resulted in additional costs. These sales are at lower profit margin and cost saving options will be looked into for the remainder of the year. The budget for the financial year included operating cost rises close to the inflation index at the time, but the decline in inflation has resulted in savings against budget for the three quarters to date. Internet coverage is still on-going with new locations and solutions identified and trials are on-going at a few schools.

NYnet is continuing to work on diversification of product offering to the private sector. It is a difficult market to capture but the sales team have seen some promising leads. Rising costs due to inflation is still the biggest challenge despite the rate beginning to fall.

NYnet has continued its work with NYC to productise its network through trials. New cost saving options are being considered, wherever possible, through diversifying equipment used on different orders and using the own Local Full Fibre network for new orders.

## **First North Law**

First North Law (FNL) has had a stable Q3 and forecast outturn is in line with budget. The additional resource available via secondment agreements continues to be welcomed and utilised thereby driving up instructions from existing clients. Financially FNL is on track to report a profit for the third successive year despite increased overheads.

Dedicated staffing remains a key issue and market conditions are such that recruiting lawyers to work directly for FNL is unlikely. As reported in Q2, FNL intends to grow its own lawyers and 2 trainee solicitors have now been recruited by NYC and will be introduced and exposed to FNL during their training contract. Whilst this is a slow burn, it is a tried and tested method of resolving staffing resource issues.

## **Brierley Homes**

Revenue continues to be driven principally by sales at the Great Ouseburn and Whorlton Meadows sites, with further sales at the Marton cum Grafton site also. The forward development plan continues to be further refined, with commencement dates on several pipeline sites being pushed back into 2024/25 and 2025/26. This has resulted in the bulk of the projected reduction in profit for 2023/24 compared to budget and Q2, with projected Sales Revenue being moved into later years along with additional costs being incurred to complete the Marton cum Grafton site. An in-year loss of £739k is now forecast for Brierley Homes at the end of the 2023/24 financial year.

It should be noted that the loss for 2023/24 largely represents a timing change to revenues rather than a reduction to underlying profitability across the full Brierley Homes development pipeline with sales, and therefore profits, which were due to be achieved in 23/24 now forecast for 24/25 along with a reduced forecast profitability on the Marton cum Grafton site.

Sites that have been reprofiled in delivery include Branton Lane, where sales have been moved back from 23/24 into Q1 2024/25 following Section 278 public highways related issues at the site and Ouseburn Phase 2 which is also impacted by delayed revenue along the same timeline.

In order to progress the pipeline delivery, approval was obtained in Q2 for the purchase and development of three further sites.

Despite the above reprofiling of delivery, significant shareholder value continues to be demonstrated by Brierley Homes for 23/24 and beyond with a positive shareholder value of £706k estimated for the year.

Re-profiled profit projections, based on the current pipeline of projects, anticipate that profits of £2.8m will be generated by Brierley Homes over the three financial years to 2026/27. There is a risk, however, that if sales do not materialise at the value forecast, the company could see a reduction in projected future profits.

This risk is mitigated through a strong sales strategy and control of costs. Brierley Homes looks to mitigate wider economic pressures via the core strategy of choosing only to develop in higher demand areas, where the housing market is more robust and better insulated from economic headwinds. This is achieved via diligent site appraisal; incorporating up to date and comprehensive market intelligence aimed at ensuring sites with high house values and regular sales turnover are matched with appropriate developments. The result of this approach is borne out by 50%+ of Brierley Homes customers being cash buyers, with mortgage rates having a to-date very limited impact upon sales interest and pricing. Each project is provided a 2-phase base case for approval, including assessed sales values and construction costs with contingencies to both. This is

to combat foreseeable interest rate rises and sales market drops; ensuring that Brierley Homes pipeline financials and associated Business cases are robust.

### **Align Property Partners (APP) and Align Property Services (APS)**

A new company, Align Property Services Ltd. (APS) commenced operations in this quarter on 01 December 2023. This has allowed APP to pursue its commercial aspirations without constraint. The financial results for Q3 in this report encompass the combined performance of both companies.

Cumulative Profit Before Tax (PBT) of £1.060m as at Q3 represents a significant outperformance against the year to date budget of £632k. Contract volumes remain strong coming off a very successful 2022/23 trading year. Forecasted PBT for the full year stands at £1.191m, which reflects a projected out performance against budget of £491k. This better reflects the trading performance observed in the year to date.

A £750k Dividend payment was paid to NYC this quarter, in addition to a £500k payment made to NYCC in February 2023.

Recruitment and retention of appropriately skilled staff in a competitive marketplace continues to be a challenge. Significant progress has been made in this area, with the utilisation of agency staff and external consultants more than halving in 2023/24 as the company continues to operate in newer markets.

### **Yorwaste**

Yorwaste made a profit before tax within the Q3 period of £284k which was £338k higher than budget. NYC's share of Yorwaste's projected profit before tax for the year stands at £1.083m which is £1.005m higher than budget.

Landfill gas revenues have been at an all-time high and this supported both the current and prior year actuals. However, in the coming 2024/25 budget year these will be at a much reduced, albeit still ahead of pre-Ukraine conflict levels levels, which combined with the underlying decline in gas volumes will result in an estimated fall of £1.7m. To combat some of the pressures, Yorwaste has continued to explore options to maximise current year landfill gas revenues through continued investment in gas well optimisation.

The development of commercial initiatives to develop growth continue to be pursued, as is tight cost control.

The Commercial price rises implemented for 2023-24 have generally held, however there remains a risk of attrition as business struggle with their increasing costs, and lower demand. The company has strengthened and rebalanced its sales team to mitigate attrition and drive growth. A business development manager has been recruited to pursue larger contracts. Progress is being made, but market conditions remain highly competitive, and this is not expected to change in the foreseeable future.

Whilst customer numbers are broadly flat, tonnages are down. This, combined with further route optimisation, has allowed a further reduction in the commercial fleet costs.

The availability of parts, and the poor support from the leasing companies, continues to impact the uptime of plant and fleet vehicles.

Driving future costs reductions through "invest to save projects" continues to be a priority. We are continuing to review the potential for investment in small-to-mid-scale solar as part of net zero obligations and reducing longer-term electricity costs.

The group is continuing to attract new clients and gain contracts. The areas of growth are the support being provided to other council internal audit teams experiencing resourcing pressures and to schools/MATs. A £39k profit before tax is expected in the forecast outturn. NYC's share of PBT is £19k, which equates to a £5k improvement against budget.

Recruitment and retention of appropriately qualified and experienced staff continues to be a concern. Continuing recruitment and investment in professional development programmes is essential to maintain capacity within the business and remains a priority. The Company has also commissioned an external review by NYC of the existing pay / grading structure to ensure it remains competitive.

A project implementation plan has been developed to mitigate the impact of the introduction of a new audit management system on service delivery and to ensure the system is available by the anticipated 'go live' date of 1 April 2024.

### **North Yorkshire Highways (NYH)**

Forecast profit for 2023/24 is £45k which is £26k higher than budget which is reflective of the ongoing efficiencies generated through NYH.

Additional capital works are being delivered by the company leading to further revenue being generated in comparison to budget. Interest payable is above budget at the end of Q3 due to the interest rate increases during the year from 10.75% to 11.50% although a loan repayment has been made during the year.

NYH and NYC continue to work together to ensure efficiencies are maximised. Partnership working has resulted in 1.5million square metres of surface dressing completed across the county, over 100,000 square metres of potholes filled in, 2,900 emergency call outs attended and 250,000 kilometres of roads treated for winter maintenance.

Compliance to ISO standards was achieved in December 2023 after a 9-month focus, which allows NYH to tender for other public sector works and commercial opportunities in addition to providing a framework for good management practices and continual improvement.

### **Bracewell Homes**

The FY23/24 outturn forecast for profit before interest and tax equals £1.557m, which is broadly in line with the Q1 projection.

The main challenge for Bracewell Homes concerns delivery on time by developers. The company is due to complete on house purchases at two sites this financial year, however neither developer achieved their initial forecast completion dates.

To try and mitigate this, Bracewell regularly seeks updates from the developers, and challenges these updated timescales, in order to forecast as accurately as possible.

### **Maple Park**

The projected profit before tax for 2023/24 of £233k represents a significant £161k outperformance of the full-year budget.

Maple Park has entered its second year of operation. It has received overwhelmingly positive feedback from its visitors and has established itself with families and funeral directors alike. The bereavement facility features an electric cremator making it a "green" facility, contributing towards the Council's net zero ambitions.

Q3 performances has shown the Maple Park facility to be performing better than expected financially and this is driven by lower than budgeted electricity costs. Energy price volatility may mean this benefit is not replicated in future years.

Ancillary memorial sales are expected to increase as the site matures and more land is made suitable for memorialisation. There has also been an increase in cremation numbers from 2022/23, with this year continuing to demonstrate a consistent trend of excelling cremation targets.

Approval has been given to bring the operation wholly in-house within North Yorkshire Council. Approval will be sought from the Executive to wind up Hambleton Holdings and Maple Park LLP and transfer the assets into the Environment Directorate.

### **Brimhams Active**

The forecasted loss before tax in this financial year of £388k is primarily due to uncontrollable construction delays to the facility development programme that delayed the date at which increased levels of income could be achieved. These delays involved Harrogate and Knaresborough Leisure and Wellness Centres.

There are five risks to the financial performance of the business, as follows. Exceptional cost inflation above budget, the cost-of-living impact on service demand, the performance of the new/ unique five ways to wellness service offer, the effectiveness of marketing and sales processes and the retention of practitioner roles i.e., therapists, swimming teachers and instructors.

### **Central Northallerton Development Company (CNDCL)**

Central Northallerton Development Company (CNDCL) is a 50:50 Joint Venture partnership between NYC (formerly Hambleton District Council) and Wykeland Property, which was established to redevelop the old Northallerton Prison site. The mixed-use site called Treadmills is now complete, but several units are still to be let. The Council owns the site with CNDCL acting as Development Manager. CNDCL also leases Crosby Road car park from the Council.

The trading activity at CNDCL relates solely to the income generated from the car park.



## North Yorkshire Council

### Shareholder Committee

19 March 2024

## Commercial Governance Review

### Report of the Corporate Director, Resources.

#### 1.0 PURPOSE OF REPORT

- 1.1 To provide an analysis of how Council owned companies are governed using best practice for commercial governance as a guide as set out in the Chartered Institute of Public Finance & Accountancy (CIPFA) updated publication “Local Authority Owned Companies – A good practice guide 2022 edition”. This report provides an update to the Commercial Governance Review report presented to the Audit Committee on 11 December 2023.

#### 2.0 SUMMARY

- 2.1 A review of governance of companies has been undertaken taking into consideration CIPFA good practice guidance. This report sets out the findings of the review and considers - where applicable - standardized approaches to governance between companies following local government reform. The recommendations identified from the review are laid out in the report. The guidance from CIPFA is welcome but it should be seen in the context of ensuring sound decision making and it is therefore suggested that it should not be taken as definitive in all cases. For example there is a risk that potential conflicts of interest lead to a distancing of company and shareholder objectives.
- 2.2 Pleasingly, the outcome of the review shows that the Council's governance and reporting structures surrounding commercial entities are largely compliant with the CIPFA guidance and are deemed to be robust and appropriate for each company.

#### 3.0 BACKGROUND

- 3.1 Through Local Government Reorganisation (LGR) North Yorkshire Council (NYC) inherited a number of companies that were owned by the predecessor county, district and borough councils. The following Local Authority Companies are now owned by NYC.
- Central Northallerton Development Company Limited (50% owned by the Council and 50% owned by Wykeland Properties Limited)
  - Hambleton District Holdings Limited
  - Maple Park (Hambleton) LLP
  - Bracewell Homes Limited
  - Brimhams Active Limited (Teckal)
  - Mercury Housing Company Limited
  - NY Highways Limited (Teckal)
  - First North Law Limited
  - Brierley Homes Limited
  - Align Property Partners Limited
  - Align Property Services Limited (Teckal)

- Yorwaste Limited (Teckal) (77.3% owned by the Council and 22.7% owned by City of York Council)
- Nynet Limited (Teckal)
- Veritau Limited (Teckal)

These companies are referred to as the “Brierley Group”. Whilst the Brierley Group is not a legal entity in itself, and the group is not a group of companies in the traditional legal sense (with a holding company) it acts to provide significant oversight for NYC through regular meetings of the Brierley Board. An updated structure of all the Council owned companies is at **Appendix A**.

3.2 The governance structure for the Brierley Group is tiered into multiple levels:

- (a) Executive
- (b) Shareholder Committee & Shareholder Representative
- (c) Brierley Board
- (d) Individual Company Boards

3.2.1 Each tier within this hierarchy has a different responsibility and performs a different role regarding the governance of the Brierley Group companies.

3.2.2 Brierley Board is an advisory board made up of the members of the Shareholder Committee and senior Council officers (including in particular, the Chief Executive, Corporate Director, Resources and Assistant Chief Executive Legal and Democratic Services). Brierley Board reviews quarterly financial and company updates. The companies are each invited to an annual “deep dive” where detailed discussions take place with the managing director from each respective company. The Brierley Board acts to assist the Shareholder Committee and also receives reports from each company on behalf of the Council as shareholder/member.

3.2.3 The Council’s Shareholder Committee is a committee of the Executive established to provide oversight of the Council’s company interests in accordance with any principles agreed by Council and provisions contained within any shareholder and company member agreement. The Shareholder Committee and Shareholder Representative exercise the powers and responsibilities of the Council as a shareholder or member of each company in accordance with the Shareholder Committee Delegation of Decision Making. The Shareholder Representative, currently the Council’s Chief Executive, is authorised to take certain decisions on behalf of the Council. The Shareholder Representative is also the person who can sign documents on behalf of the Council as a corporate body. Certain decisions are reserved to the Executive.

3.3 In June 2022, CIPFA published updated guidance for local authorities to consider in relation to the governance process in place for any local authority owned companies entitled “Local Authority Owned Companies – A good practice guide 2022 edition”.

3.4 The CIPFA publication aims to provide local authorities with guidance and best practice around the establishment of trading companies, setting up effective governance and monitoring processes, ensuring compliance, understanding the risks involved and supporting the enduring success of their business aspirations.

3.5 In December 2022 North Yorkshire County Council’s Audit Committee were presented with a Commercial Governance Review report, and an update report covering the Review was presented to Audit Committee in December 2023. Those reports highlighted the best practice guidance set out in the CIPFA publication and set out that a review of NYC’s commercial governance arrangements would be undertaken post vesting day; with the outcome and actions from that review being reported back to the Audit Committee. This report provides an

update on, and should be read in conjunction with, the December 2022 and December 2023 reports.

3.6 In recent years there has been many instances where Local Authority trading companies have failed or fallen into decline. Successive years of reduced funding from central government have exposed underlying flaws in Local Authority business models, exposing the relevant Council to financial stress, reputational damage and questions around its leadership. Grant Thornton published lessons learned from the 2020 and 2021 Public Interest Reports. Some recurring themes are:

- Inappropriate or weak governance
- Political agenda with no scrutiny and challenge
- Lack of adequate skills and commercial acumen
- Roles and responsibilities unclear
- Failure to understand, identify and mitigate the risks (current and emerging)
- Lack of ongoing due diligence, failure to understand market complexities
- Weak or flawed long term Business Plans

3.7 The Brierley Group has paid considerable attention to setting up a strong system of governance and creating a commercial culture that is open to scrutiny and challenge that promotes the success of the companies. The Council is prudent and proactive in taking appropriate care of its resources and carefully managing its exposure to risk. The review found that the companies have good control and due diligence to mitigate the points listed in 3.6. The companies demonstrate strong and effective controls in order to create sustainable and enduring shareholder value to the Council.

#### **4.0 CIPFA COMMERCIAL GOVERNANCE REVIEW FINDINGS**

4.1 A Commercial Governance Review Group was established to review the council owned companies; using the CIPFA guidance as a framework to assess existing arrangements. The Review Group included representatives from the Council's legal and finance team, who undertook detailed reviews alongside each company that is actively trading.

4.2 A "checklist" was produced as a basis for reviewing each company's compliance with the CIPFA guidance and other areas of best practice; a copy of which is attached at **Appendix B**.

4.3 The Review Group met with a total of 10 companies. It did not meet with the following companies due to their proposed imminent closure and/or dormant status:

- Central Northallerton Development Company Limited – This company is a Joint Venture that was established by Hambleton District Council to progress the Treadmills Development in Northallerton. The development is now complete and the only trading activity within the company relates to the operation of the Crosby Road car park on the development site. The Council and its Joint Venture partner are reviewing options that will allow trading activity to cease and allow the JV to be dissolved / closed within the next twelve months.

Hambleton District Holdings Limited and associated Maple Park (Hambleton) LLP – Work is underway to review options to bring the Maple Park (crematorium) operation in-house for the 2024/25 financial year, which will negate the need for these entities and, if agreed, will result in them being closed or remaining dormant.

- Mercury Housing Company Limited – this company is currently dormant.

## 5.0 RECOMMENDATIONS FOR IMPROVEMENTS

The intention of this report is to “report by exception” and detail the areas that were identified through the governance review. Pleasingly the review showed that the Brierley Group entities are largely compliant with the CIPFA Guidance and the overall governance structure and reporting procedure to the Council is deemed to be robust and appropriate. The areas identified for improvement within the review are set out in the sections below.

### 5.1 Conflicts of Interest

5.1.1 The company boards contain a mix of executive and non-executive directors. All of the companies have Council officers appointed as non-executive directors, and some also have councillors appointed as non-executive directors. The CIPFA guidance suggests having a policy for declarations and conflicts of interest within each company’s articles of association. This is something which the companies currently do and conflicts are generally declared as a standing agenda item at board meetings. Directors also have regard to the rules on declaring their interests and any restriction on voting, as may be set out in the company’s articles of association.

5.1.2 The guidance sets out that the Council should minimise the potential for conflicts of interest within its companies and ensure potential conflicts are identified and managed appropriately. Careful consideration should be given as to the representation of the Council on the Company boards of directors. This is of particular importance for Council officers as the potential for conflicts of interest may be greater where council appointed directors fulfil a client / commissioning role on behalf of the Council and/or where directors are also the Council’s statutory officers. Where this is the case, it is recommended (and often implemented) that Council officers delegate their responsibilities when acting as the client.

5.1.3 Having senior Council officers as directors of companies can improve the shareholder value of the companies through the contribution of relevant knowledge, skills and expertise as well as the officer’s duty to promote the success of the company. It can help to ensure that the priorities of the Company and the Council are aligned and are ultimately ensuring best value for the public purse. As a director, the officer should consider their wider role in relation to the aims and objectives of the company to ensure that the council is getting best value as the shareholder. This could be through service provision of the company, utilising the Council’s services or through income generation.

5.1.4 Due to recent updates to the board members following LGR, there are some companies and directors who have received recent training. However, not all company directors have received recent training to support their roles and duties. Best practice guidance recommends that regular training is provided to ensure directors and company management teams have appropriate knowledge and experience. This includes training to clarify roles and responsibilities, and sector specific training to promote a deeper understanding of the specific challenges and issues facing the relevant company.

5.1.6 The guidance also states that there should be a formal policy in place to ensure Members and officers are aware of potential conflicts of interest when performing their role for the Local Authority and the company. The Council has a policy within its constitution in relation to appointments to companies. However, this could be reviewed and additional guidance prepared.

- **Recommendation:** to require all companies to include conflicts of interest as a standing agenda item at board meetings.
- **Recommendation:** to develop an in-depth policy for dealing with conflicts of interest for all directors and in particular Council appointed directors. This will supplement the current policy in the constitution.

- **Recommendation:** for all directors to provide annual declaration of interests and for all companies to keep an up-to-date register of interests.
- **Recommendation:** for all companies and directors to undergo refresher training relating to their roles and responsibilities and Directors Duties and how this may interact with their obligations and roles within the Council.

## 5.2 Elected Members on Boards

5.2.1 Where councillors are appointed to a board the CIPFA guidance sets out that conscious thought should be given as to ensuring that they hold the required skills, knowledge and experience to fulfil the roles. The guidance also cites that the inclusion of elected members on boards could have a negative impact on council decision-making where councillors subsequently need to withdraw from committees due to conflicts of interest and there can be risks to continuity if councillors lose their positions if not re-elected. It should be noted that the guidance does not positively prohibit Councillors sitting on Council Boards and the Council is free to have regard to but deviate from the guidance if it considers it appropriate.

5.2.2 The current companies that have elected members on the board are: Yorwaste Limited, Veritau Limited, Nynet Limited and Central Northallerton Development Company Limited. Elected Member oversight of companies is provided within the Brierley Group's governance structure via the Shareholder Committee and Brierley Board. On that basis, and subject to the exception set out in paragraph 5.2.3 below, it is recommended that the appointment of Elected member representatives to company boards be reviewed, and where appropriate elected members stand down from company boards. Relevant elected members could still be offered the opportunity to attend board meetings as observers where this is deemed to be appropriate.

5.2.3 Veritau and Yorwaste are both jointly owned between North Yorkshire Council and City of York Council. Therefore, elected member directorships are deemed appropriate where City of York elected members also sit on the board. Where possible the board memberships of these companies will be reviewed together with City of York Council.

- **Recommendation:** that the board membership for companies is reviewed and consideration given to whether Elected members should stand down as directors (except Veritau and Yorwaste) on the basis that the Shareholder Committee provides the elected member oversight of commercial entities and that potentially 'observer' status could be offered to Councillors on the relevant Boards.

## 5.3 Business Plans

5.3.1 A business plan is the internal document which helps to lay out the future strategy of the company. This is not the same as any annual reporting which is for public consumption.

5.3.2 Every company requires a business plan to enable the company to plan effectively. Business plans are presented to Brierley Board annually for review and challenge. The majority of companies do have an annual business plan but the review identified that the content is variable. Whilst it is recognised that there will be variations in business plans from company to company (so a standardised format is not proposed) there are a number of areas of key content which it is felt should be included in every business plan.

- **Recommendation:** to ensure that each business plan contains the following information unless there are very specific reasons not to:-
  - Minimum of 3 future years financial forecasting including details of any key assumptions.

- Opportunities
- Risks
- Pipeline of work
- Major developments
- Key performance indicators
- Teckal test results (where applicable)

#### 5.4 Back Office Service Level Agreements (SLAs)

5.4.1 The majority of our companies rely on and buy from the Council the support service functions they need, e.g. finance, HR, legal, payroll, admin, accommodation, etc. These arrangements have developed over time on an ad-hoc basis and vary from company to company. In some cases no formal agreements (in the form of an SLA document) can be found between the company and the Council. Having formal SLAs in place would better reflect the commercial nature of the arrangements, help to clarify the expectation of the two parties and provide a definitive path to resolving disputes should any issues arise.

5.4.2 In addition, it may be beneficial to put in place an SLA framework of overarching terms and conditions encompassing all support services for all companies. From the Council's perspective it would avoid any unnecessary variations in the support the companies receive, and for the companies it could be more efficient to monitor and manage.

- **Recommendation:** a phased approach to implementing the recommended changes – in 2024, to review and refresh the back office SLAs for financial year 2024/25, documenting the agreed charges in advance and the details of service to be provided; next year to put in place the SLA framework with standardised terms and conditions.

#### 5.5 Audit

5.5.1 An audit exemption can be applied for companies where two of more of the following apply:-

- Turnover of less than £10.2m
- Assets worth less than £5.1m
- 50 or fewer employees.

However, a company may require an audit for reasons of reassurance or due to the industry that they operate in. Currently only Yorwaste and NY Highways require an audit by law. Of the other companies, the majority conduct full audits with a small number having limited or no audits.

5.5.2 There are three options for each of the companies that do not meet the criteria to have a mandatory audit:-

- No audit (or internal independent audit conducted)
- Medium audit
- Full audit (an audit on the same level as NYC)

At present all of the companies either have a full external audit or no audit. The current external audit provider has offered the opportunity of a 'medium' audit. Discussions are taking place to understand the implications of this and the differences between that and a full audit, so that impacts on assurance and resources can be assessed. Once this is fully understood, a proposal will be considered as to what level of audit is appropriate for each company.

- **Recommendation:** that work is undertaken to review each entity and agree the level of audit required in line with their requirements and complexity, which ensures there is a balanced approach whilst providing the necessary assurance for company directors, as well as the Council as shareholder.

## 5.6 Teckal Testing

5.6.1 Some companies are known as “teckal” companies. These are companies that comply with the provisions of Regulation 12 of the Public Contracts Regulations 2015. The Council is able to award work to its teckal companies without the need for a procurement procedure. As part of the teckal exemption, teckal compliant companies are required to undertake at least 80% of its work for the controlling authorities. i.e. 80% of that company’s turnover for the rolling three-year period must be for the Council (or joint councils where appropriate). Therefore, up to 20% of turnover can be delivered from external commercial activity. This is taken as a rolling three-year test and is sometimes referred to as the 80:20 test.

5.6.2 There have been some inconsistencies in the approach and timing of teckal testing within the Brierley Group’s teckal entities. All teckal companies should calculate annually that they remain within the 80:20 rule on a rolling three-year basis. This should then be reported in the business plan.

5.6.3 Teckal companies should ensure they have appropriate Procurement and Contract Procedure rules in place and seek appropriate Procurement and Legal support.

- **Recommendation:** All teckal companies to complete annual teckal calculations and report these calculations within their business plan.

## 5.7 Risk Registers

5.7.1 There has been an inconsistent approach to risk registers between the companies. Most companies have a risk register but in some instances they were out of date or not subject to reviews throughout the year. It is suggested that risk registers are updated at least annually, with the risk register being included in the business plan. The format of the risk register is not prescriptive as different approaches may be relevant to each company. Risk registers should be monitored periodically through the year as part of company board reporting to ensure no major issues.

- **Recommendation:** Complete annual risk register reviews and include the risk register within the business plan. Company Boards to monitor and review risk registers periodically during the year.

## 5.7 Other matters

It should be noted that certain gaps were identified in the review of Bracewell Homes’ governance arrangements, therefore additional work is required to be put in place to ensure that arrangements are consistent with other NYC companies and the CIPFA best practice guidance. Examples of gaps identified in the review include a lack of audit arrangements, lack of formally drafted support service arrangements, and lack of a risk register and formal risk management arrangements.

5.8 Although gaps have been identified it should be noted that this is predominantly reflective of the fact that the activities undertaken by Bracewell Homes are particularly low risk in nature from a commercial perspective. The review confirmed that there are no significant financial risks associated with the company, or any areas that would be deemed to cause potential reputational risk for the Council; and the company is financially sound and makes strong

financial returns. A review of Bracewell homes is currently taking place to determine whether its operations and assets could be insourced to the Council. The officers responsible for the company are keen to address the issues identified in the governance review and the majority of issues identified have either already been addressed or are currently being actioned and will be addressed imminently.

- **Recommendation:** for the governance arrangements for Bracewell Homes to be updated to ensure consistency with other Brierley Group entities and the CIPFA best practice guidance.

## **6.0 FINANCIAL IMPLICATIONS**

6.1 There are no financial implications arising from this report. The review did not highlight any issues which would indicate that the financial standing of any of the entities is of concern.

## **7.0 LEGAL IMPLICATIONS**

7.1 The legal implications of the recommendations in this report are set out against the relevant recommendation.

## **8.0 EQUALITIES IMPLICATIONS**

8.1 Not applicable

## **9.0 CLIMATE CHANGE IMPLICATIONS**

9.1 Not applicable

## **10.0 REASONS FOR RECOMMENDATIONS**

10.1 The recommendations in the report are made to ensure the appropriate level of governance is maintained in all commercial companies considering CIPFA guidance and also to ensure there is a consistent approach to governance post local government reorganisation.

## **11.0 SUMMARY OF REPORT RECOMMENDATIONS**

- To require all companies to include conflicts of interest as a standing agenda item at board meetings.
- To develop an in-depth policy for dealing with conflicts of interest for all directors and in particular Council appointed directors. This will supplement the current policy in the constitution.
- For all directors to provide annual declaration of interests and for all companies to keep an up-to-date register of interests.
- For all companies and directors to undergo refresher training relating to their roles and responsibilities and Directors Duties and how this may interact with their obligations and roles within the Council.
- That the board membership for companies is reviewed and consideration given to whether Elected members should stand down as directors (except Veritau and Yorwaste) on the basis that the Shareholder Committee provides the elected member oversight of commercial entities.
- To ensure that each company business plan contains the following information unless there are very specific reasons not to:-
  - Minimum of 3 future years financial forecasting including details of any key assumptions.
  - Opportunities



- Risks
- Pipeline of work
- Major developments
- Key performance indicators
- Teckal test results (where applicable)
- A phased approach to implementing the recommended changes to Back Office Service Level Agreements.
  - In 2024, to review and refresh the back office SLAs for financial year 2024/25, documenting the agreed charges in advance and the details of service to be provided;
  - 2025/26 to put in place the SLA framework with standardised terms and conditions.
- That work is undertaken to review each entity and agree the level of audit required in line with their requirements and complexity which ensures there is a balanced approach whilst providing the necessary reassurance.
- All teckal companies to complete annual teckal calculations and report within the business plan.
- All companies to complete annual risk register reviews and include the risk register within the business plan; with the register being monitored periodically during the year.
- For the governance arrangements for Bracewell Homes to be updated to ensure consistency with other Brierley Group entities and the CIPFA best practice guidance.

## **12.0 RECOMMENDATIONS**

12.1 Shareholder Committee are requested to:

- i) approve the recommendations as set out in each section of the report and as summarised in paragraph 11;
- ii) delegate the approval of the new conflicts of interest policy to the Assistant Chief Executive – Legal and Democratic Services; and
- iii) delegate all other necessary steps to secure the implementation of all other recommendations set out in this report to the Corporate Director, Resources.

### **APPENDICES:**

Appendix A – Company Structure Post LGR  
Appendix B – Company Compliance Checklist

### **BACKGROUND DOCUMENTS:**

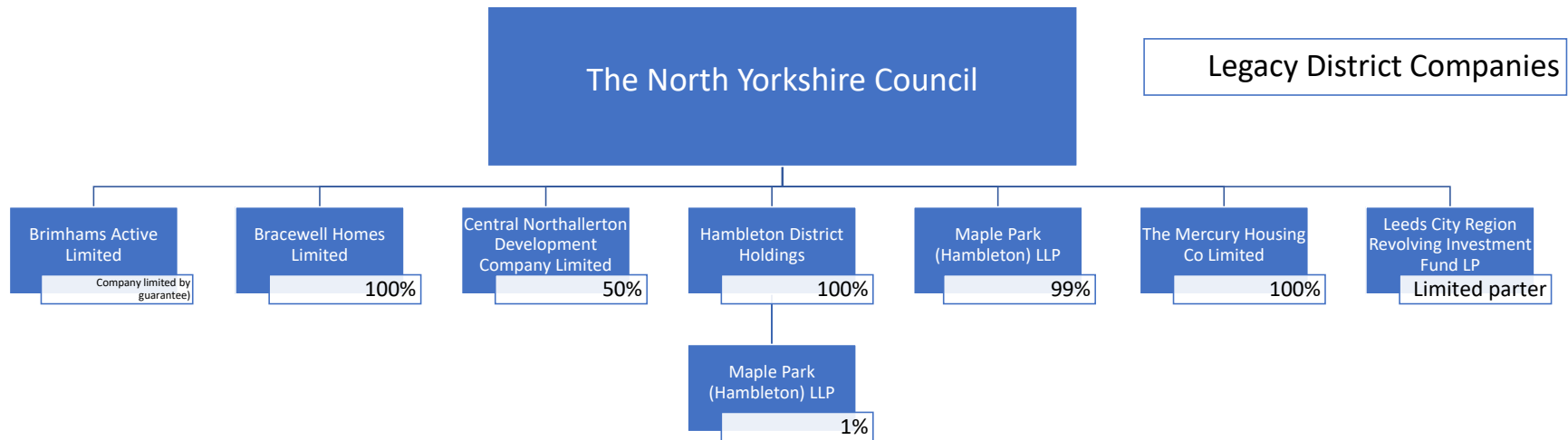
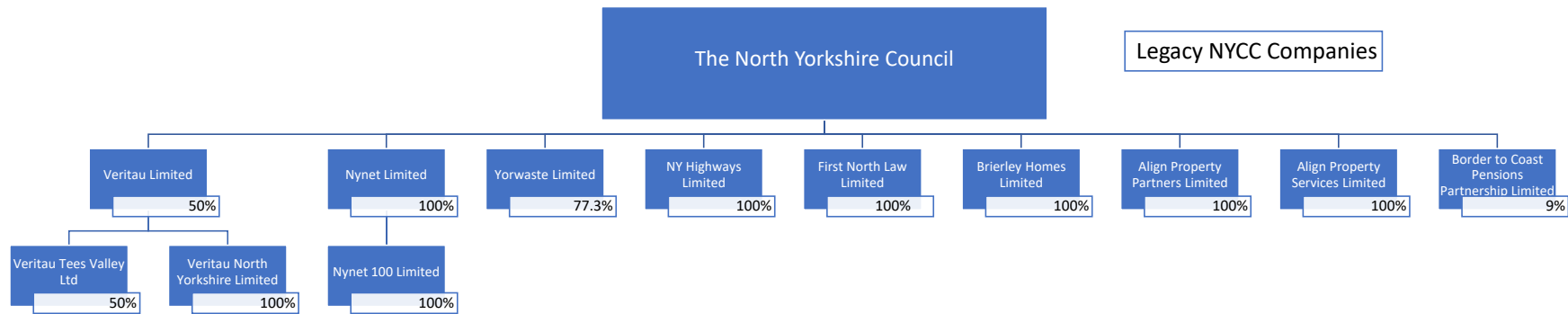
*CIPFA Guidance*

*Gary Fielding*  
Corporate Director – Resources  
County Hall  
Northallerton  
(7 March 2024)

Report Author – *Peter Williams, Head of Finance, Qingzi Bu, Senior Accountant and Bethany Bilby, Solicitor*  
Presenter of Report – *Kerry Metcalfe, Assistant Director Commercial, Property & Procurement*

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

**APPENDIX A  
COMPANY STRUCTURE POST LGR**



## GOVERNANCE REVIEW CHECKLIST

## GENERAL COMPANY COMPLIANCE

Does the company have detailed and appropriate articles of association? Are they teckal compliant (if appropriate)?
What is the company structure and is this structure appropriate? (eg. Teckal / Commercial) Has the company been set up correctly to reflect the structure?
Is a Shareholder Agreement in place and, if so, does it adequately define the entity's approach to risk management and internal controls? If not, is one necessary?
Is there a Service Agreement in place with the Council? If so, what services does the company provide to the Council and vice-versa. Are the Services Agreements adequate and are they effectively managed? Are there any other contracts in existence with previous Borough/District Councils which may need amalgamating with the Services Contract (eg. waste, property etc).
Are there written SLAs in place for back-office services provided by the Council? What services are currently provided by the Council and how are charges calculated and managed? Are support services provided to the company charged at full cost?
What Insurance does the company have in place? Does it hold insurance itself or are these part of the Council's policies?
What systems or ICT software is used by the company? Have the Contracts for these services been reviewed recently?
Does the Company have a bank account?
Are the Company Statutory Books and webfiling up to date?
How does the Company report to the Council?
How often are the company accounts reviewed? Is an Annual Budget signed off? Does the Company have a long term financial strategy?
If a Teckal company: does it perform an annual Teckal test on its actuals and forecast to ensure compliance with 80:20% split of work
Does the company have employees?
What Company Policies are currently in place? <ul style="list-style-type: none"> <li>• Finance</li> <li>• Procurement and/or Contract procedure rules</li> <li>• Scheme of delegation</li> </ul>
Does the company own or lease property?
What arrangements are in place for the preparation of statutory accounts and the calculation of corporation tax liabilities?

Does the Council have loan agreements with the company? What are the terms of the loan agreements and are the loans on commercial terms?
Do the review of the financial statements highlight any concerns (eg. potential liquidity issues, insufficient financial reserves)?
Are there any Pension Fund subsumption agreements in place, which are underwritten by NYC?

## ADDITIONAL CIPFA GUIDANCE COMPLIANCE

What internal and external audit controls are in place? Are the current audit arrangements deemed to be appropriate?
<p>Conflicts:</p> <ul style="list-style-type: none"> <li>• Do any conflicts of interest get declared at Board Meetings as a standing agenda item?</li> <li>• Is there a policy for declarations and conflicts of interest within the company's articles of association?</li> <li>• Are Council appointed directors aware of potential conflicts of interests in their role as Director?</li> </ul>
Does the Board membership include Non-Executive Directors or independent directors?
If a teckal company: Does the board contain a majority of Council appointed directors to ensure the "control" test is met?
<p>Business Planning:</p> <p>Does the company have a minimum of 3 years of strategic business plan forecasting using an agreed format (standardised across all companies)? Covering the following matters:</p> <ul style="list-style-type: none"> <li>• Financial projections – Historic against business case / approved budget, future forecasts</li> <li>• SWOT analysis</li> <li>• Risk register</li> <li>• Capital / Investment plans</li> <li>• Product / service development</li> <li>• New business proposals / pipeline</li> <li>• Technology Roadmap</li> <li>• Workforce planning</li> </ul>
What is the company's approach to risk management, and what processes and procedures are in place to manage and monitor risk? Are the risk management approaches deemed to be appropriate given the levels and types of risks facing the organisation?
Have Council appointed Directors been adequately trained / are they sufficiently knowledgeable on their roles and responsibilities as a company Director?

## North Yorkshire Council

### Shareholder Committee

19 March 2024

#### Border to Coast Governance Documents

#### Report of the Corporate Director, Resources

*The Appendices to this report contains information of the type defined in paragraph 3 of Part 1 of Schedule 12A Local Government Act 1972 (as amended) as it contains information relating to the business affairs of Border to Coast Pensions Partnership Limited and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

#### **1.0 PURPOSE OF REPORT**

- 1.1. To describe the background of the Council's part-ownership of Border to Coast Pensions Partnership Limited, a company created to manage the investments of the North Yorkshire Pension Fund.
- 1.2. To recommend approval of the updated governance documents of Border to Coast Pensions Partnership Limited.

#### **2.0 BACKGROUND**

- 2.1. On 1 November 2016 the Local Government Pension Scheme (Management and Investment of Funds) Regulation 2016 came into force. These Regulations mandate that the 89 separate Local Government Pension Scheme (LGPS) Funds in England and Wales combine their assets into a small number of investment pools.
- 2.2. The associated guidance states that each LGPS administering authority must commit to a suitable pool to achieve benefits of scale. The Secretary of State has direction and intervention powers if he is not satisfied that an administering authority is complying with its obligations in relation to the Regulations.
- 2.3. North Yorkshire Council (as the administering authority for the North Yorkshire Pension Fund) was actively involved in the development of an investment pooling arrangement, Border to Coast Pensions Partnership (BCPP). Eleven other administering authorities were also involved.
- 2.4. In December 2016 the Secretary of State approved BCPP as meeting the requirements of the 2016 Regulations and associated guidance.
- 2.5. At its meeting on 15 February 2017 the Council decided to formally commit to be a member of BCPP, which at that time was in the process of being

incorporated with the name Border to Coast Pensions Partnership Limited. The proportional shareholding of each administering authority including this Council was to be 1/12<sup>th</sup>.

2.6. To give effect to this decision, the Council:

1. entered into a Shareholder Agreement between the Council, the other administering authorities and BCPP Ltd, which describes how shareholders exert control over the company
2. entered into an Inter-Authority Agreement between the Council and the other administering authorities, which describes the establishment of governance arrangements relating to the company
3. agreed the Articles of Association to be adopted by BCPP Ltd
4. approved the subscription of 1/12<sup>th</sup> of the shares in BCPP Ltd
5. approved the establishment of suitable governance arrangements including the BCPP Joint Committee which assists administering authorities with oversight of BCPP
6. referred the nomination of the shareholder to the Executive

2.7. In 2020 two administering authority pension funds merged, so each proportional shareholding is now 1/11<sup>th</sup>.

2.8. In March 2023 Shareholder Committee approved changes to the Shareholder Agreement, Inter-Authority Agreement and Articles of Association. The changes were needed to reflect appropriate governance arrangements for an established rather than start-up company.

2.9. Where decisions are required, the Council considers that recommendations should be brought to the Shareholder Committee in accordance with the Council's constitution.

### **3.0 2023/24 REVIEW OF GOVERNANCE DOCUMENTS**

3.1. BCPP started managing investments on behalf of the Pension Funds of its administering authorities in 2018. At that time only a small proportion of BCPP's costs related to the management of investments in the few investment funds initially available. The vast majority of costs related to the development of the wider range of investment funds that would eventually be needed by the Pension Funds. Developing and launching each investment fund is a time consuming and costly undertaking. A cost recharge model was implemented, based on cost sharing principles agreed by the shareholders, to allow the company to recover all costs. This model is described in the Shareholder Agreement.

- 3.2. A separate agreement, the Pension Cost Recharge Agreement, details the recharge of the cost of LGPS pensions obligations.
- 3.3. It has always been the intention to move to a different model, where costs are charged directly to the investment funds to which they relate. Now that a sufficiently wide range of investment funds is available, this is intended to happen from April 2024. This requires changes to the Shareholder Agreement and the Pension Cost Recharge Agreement.
- 3.4. A small number of other changes have been made to these documents, for example to reflect the name change of The North Yorkshire Council.
- 3.5. The review process was broken down into three stages
  1. stage one was a review of each of the proposed changes in principle, undertaken by a working group of senior administering authority pension fund officers, and discussions with the administering authority elected member representatives from the Joint Committee, and BCPP's Chief Executive and Chief Operating Officer;
  2. stage two was a review of the proposed changes to the two agreements by Squire Patton Boggs acting for the administering authorities, and Eversheds acting for BCPP. Both companies have extensive experience with local authority and investment management industry organisations;
  3. stage three is for each administering authority to take the updated governance documents through their governance processes.
- 3.6. The appointment of Squire Patton Boggs was made by South Tyneside Council as administering authority for the Tyne & Wear Pension Fund, on behalf of the eleven BCPP administering authorities. Their role was to provide advice and ensure the changes were appropriate and in the best interests of the administering authorities as shareholders in BCPP.
- 3.7. Stages one and two have been completed and stage three is underway. This report is the Council's "stage three" approval. Alongside this process, the Council's Corporate Director, Resources and the Head of Investments have discussed the changes with BCPP and the other administering authorities and are comfortable with them.
- 3.8. The updated Shareholder Agreement (**Appendix 1**) and Pension Cost Recharge Agreement (**Appendix 2**) are attached to this report.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1. There are no financial implications arising from this report.

## **5.0 LEGAL IMPLICATIONS**

5.1. The updates to the governance documents do not have any financial or legal implications beyond those attached to the decision in 2017 to formally join BCPP Ltd.

5.2. A legal review of the documents has been provided by Squire Patton Boggs.

## **6.0 EQUALITIES IMPLICATIONS**

6.1 Not Applicable

## **7.0 CLIMATE CHANGE IMPLICATIONS**

7.1 Not applicable

## **8.0 RECOMMENDATIONS**

8.1. The Shareholder Committee are requested to:

- i. approve the updated Border to Coast Pensions Partnership Limited governance documents at Appendix 1 and Appendix 2, being the Shareholder Agreement and the Pension Cost Recharge Agreement;
- ii. delegate the Council entering into the two agreements to the Assistant Chief Executive, Legal and Democratic Services. delegate the nomination of an appropriate shareholder representative on behalf of the Council to the Council's Chief Executive Officer.

## **APPENDICES:**

Appendix 1 – Shareholder Agreement (confidential)

Appendix 2 – Pension Cost Recharge Agreement (confidential)

Gary Fielding  
Corporate Director, Resources  
County Hall  
Northallerton

Report Author: Tom Morrison, Head of Investments  
Presenter of Report: Tom Morrison, Head of Investments

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.



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of the Local Government Act 1972.

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## Shareholder Committee Work Programme

Meeting Date	Items of Business
<b>19 March 2024 @ 12:30pm</b>	<ol style="list-style-type: none"> <li>1. Brierley Group Q3 2023/24 Performance Report</li> <li>2. Commercial Governance Review</li> <li>3. Border to Coast Governance Documents</li> <li>4. Work Programme 2023/24</li> </ol>
<b>16 July 2024 @ 12:30pm</b>	<ol style="list-style-type: none"> <li>1. Brierley Group Outturn Report 2023/24</li> <li>2. Brierley Group Business Plan</li> <li>3. Work Programme 2024/25</li> </ol>
<b>17 September 2024 @ 12:30pm</b>	<ol style="list-style-type: none"> <li>1. Brierley Group Q1 2024/25 Performance Report</li> <li>2. Work Programme 2024/25</li> </ol>
<b>19 December 2024 @ 12:30pm</b>	<ol style="list-style-type: none"> <li>1. Brierley Group Q2 2024/25 Performance Report</li> <li>2. Work Programme 2024/25</li> </ol>
<b>18 March 2025 @ 12:30pm</b>	<ol style="list-style-type: none"> <li>1. Brierley Group Q3 2024/25 Performance Report</li> <li>2. Work Programme 2024/25</li> </ol>

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