

North Yorkshire Council

Shareholder Committee

21 October 2025

Commercial Governance Review

Report of the Corporate Director of Resources

1.0 PURPOSE OF REPORT

- 1.1 This report provides an update to the Commercial Governance Review report presented to the Audit Committee on 18 March 2024 and Shareholder Committee on 19 March 2024 and considers the feedback from a recent review undertaken by Veritau.
- 1.2 The report sets out any remaining actions required to address the eleven recommendations outlined in the March 2024 reports.
- 1.3 The report was presented to the Audit Committee on 29 September 25. To reflect the points raised by the Audit Committee, and increase elected member oversight of NYC's commercial entities, proposals have been updated and it is now recommended that the Chair and a member of the Audit Committee be invited to attend future Shareholder Committee meetings as observers.

2.0 SUMMARY

- 2.1 A review of governance of companies was undertaken in early 2024 taking into consideration CIPFA good practice guidance. This report provides an update on that review and outlines progress and any further actions required to address the eleven recommendations that were made.
- 2.2 This report was presented to Audit Committee in September 2025 and section 5.10 of the report has been updated to reflect the points raised by Audit Committee members.
- 2.3 The report outlines that, following a number of staffing changes in the past year, an officer group consisting of commercial, finance and legal team representatives has now been established. The responsibilities of this officer group will include monitoring companies' performance against the recommendations set out in this report and supporting good company governance.

3.0 BACKGROUND

- 3.1 Through Local Government Reorganisation North Yorkshire Council inherited a number of companies that were owned by the predecessor county, district and borough councils. A review of the governance arrangements of these companies was undertaken by council officers and reported to Shareholder Committee and Audit Committee in March 2024.

- 3.2 The review of governance arrangements considered CIPFA good practice guidance. 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.
- 3.3 The review concluded that the Council's governance and reporting structures surrounding commercial entities were largely compliant with the CIPFA guidance and were deemed to be robust and appropriate for each company. However, there were some areas identified for improvement, and these were reported to the Shareholder Committee via the eleven recommendations summarised in Section 4.1 of this report.
- 3.4 This report provides an update on governance arrangements and outlines progress against the eleven recommendations previously reported to the Audit Committee and Shareholder committee, alongside supplementary feedback from a recent Veritau review. The Veritau review focused on obtaining information directly from the companies with the purpose of providing assurance to management that:
- All recommendations made to the Shareholder Committee on 19 March 2024 have been completed, providing any feedback required.
 - Governance arrangements in place through the Brierley Group Board, provide the Council with the required level of assurance.
- 3.5 The following Local Authority Companies are owned (or part-owned) by the council and were reviewed within this update:
- Bracewell Homes Limited
 - NY Highways Limited (Teckal)
 - First North Law Limited
 - Brierley Homes Limited
 - Align Property Partners Limited
 - Align Property Services Limited (Teckal)
 - Nynet Limited (Teckal)
 - Yorwaste Limited (Teckal) (77.3% owned by the Council and 22.7% owned by City of York Council)
 - Veritau Limited (Teckal) (50% owned by the Council) – following Executive approval in May 2024, Veritau have restructured and Veritau Public Sector Limited has been incorporated.
- 3.6 The following Local Authority Companies are wholly owned by the council, but decisions have recently been taken to dissolve them, and they were therefore not reviewed:
- NYNet 100 Limited – Executive delegated authority to the Corporate Director – Resources to proceed with the winding-up of NYNet 100 in conjunction with the Board of the company in July 2025 (Item 719).
 - Brimhams Active Limited (Teckal) – Executive agreed to dissolve in November 2024 (Item 560).
 - Hambleton District Holdings Limited – Executive agreed to dissolve in September 2024 (Item 529).
 - Maple Park (Hambleton) LLP – Executive agreed to dissolve in September 2024 (Item 529).

- 3.7 Central Northallerton Development Company Limited (50% owned by the Council and 50% owned by Wykeland Properties Limited) was established to deliver the Treadmills development on the former prison site in Northallerton. This development is now complete and only one asset (a car park) is now owned by the company. Given the limited trading activity by the company, it was not covered by the review.
- 3.8 A structure diagram of all the Council owned companies, including those going through the voluntary strike off process, is included at Appendix A.

4.0 RECOMMENDATIONS FROM THE PREVIOUS GOVERNANCE REVIEW

- 4.1 The following eleven recommendations were listed within the Commercial Governance Report presented to Shareholder Committee and Audit Committee in March 2024.
1. To require all companies to include conflicts of interest as a standing agenda item at board meetings.
 2. To develop an in-depth policy for dealing with conflicts of interest for all directors and council appointed directors. This will supplement the current policy in the constitution.
 3. For all directors to provide annual declaration of interests and for all companies to keep an up-to-date register of interests.
 4. 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. 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.
 6. To ensure that each company business plan contains the following information unless there are very specific reasons not to: -
 - a. Minimum of 3 future years financial forecasting including details of any key assumptions.
 - b. Opportunities
 - c. Risks
 - d. Pipeline of work
 - e. Major developments
 - f. Key performance indicators
 - g. Teckal test results (where applicable)
 7. A phased approach to implementing the recommended changes to Back Office Service Level Agreements.
 - a. 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;
 - b. 2025/26 to put in place the SLA framework with standardised terms and conditions.
 8. 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.
 9. All Teckal companies to complete annual Teckal calculations and report within the business plan.
 10. 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.

11. For the governance arrangements for Bracewell Homes to be updated to ensure consistency with other Brierley Group entities and the CIPFA best practice guidance
- 4.2 As part of this update, each of the eleven recommendations have been reviewed and Section 5 of this report outlines current progress and, where appropriate, any further actions that are required to fully address the recommendations. The findings from the Veritau report have helped assess progress and any points raised within the Veritau report have been covered by the actions below.

5.0 PROGRESS AGAINST THE ELEVEN RECOMMENDATIONS

- 5.1 During the period under review it should be noted that there have been several staffing changes within the Council. This, alongside other post LGR workload priorities, has impacted on the levels of officer support available to progress the recommendations contained within the March 2024 report.
- 5.2 In recent months key officer roles, with responsibilities for the oversight of commercial governance, have been filled within the finance, legal and commercial teams. These roles include a new Head of Commercial post that was established through the post LGR restructure within the Commercial, Property & Procurement service, the recent backfilling of a vacant Head of Finance (Commercial, Property & Procurement) role, and the backfilling of a vacant Company Corporate Solicitor Lawyer role within the legal team.
- 5.3 An internal working group consisting of the above employees has been established and has now met twice. The responsibilities of the group will include monitoring company performance against the recommendations set out in this report and the continuation of support to deliver good company governance.
- 5.4 Progress against the eleven recommendations set out in section 4.1 of this report is provided below. Some of the recommendations have not yet been addressed in full due to the issues identified above, however strong governance and oversight has continued to be provided via regular Brierley Board meetings and financial reporting to the Shareholder Committee. Shareholder Committee is a public meeting led by elected Members, Cllr Les, Cllr Dadd, Cllr Crane and Cllr Wilkinson (substitute) are members of Shareholder Committee. Cllr Les, Cllr Dadd, Cllr Crane and Cllr Myers attend Brierley Board.
- 5.5 The updated actions below outline the further work required to address the previously identified recommendations, together with some additional areas of priority for the remainder of the year.
- 5.6 **Recommendation 1: To require all companies to include conflicts of interest as a standing agenda item at board meetings.**

Progress: in some instances, companies could not provide evidence via their board meeting minutes to support that conflicts of interests were included as a standing agenda item.

Action: company secretaries / directors will be reminded that, to ensure that the council can fulfil its shareholder responsibilities, conflicts of interest must be a standing agenda item. Companies should also ensure that directors are aware of what conflict's should be recorded and declared in the meeting.

Both of the above points will be covered in the training referenced within section 5.6 of this report and a proforma agenda will be offered to the companies to assist them in fulfilling the minimum requirements of the council.

5.7 Recommendation 2: To develop an in-depth policy for dealing with conflicts of interest for all directors and council appointed directors.

Progress: whilst some companies have an in-depth policy for dealing with conflicts of interests for all directors - and in particular Council appointed directors - others were not able to provide one.

Action: the council has recently developed a policy to cover 'Managing Conflicts of Interest in Relation to Council Owned Companies'. This provides a practical guide for officers and councillors who may have a role in connection with council companies and also helps everyone involved to recognise the interests involved and to avoid and manage any conflict between them. This will supplement the current policy in the constitution.

This policy is included at Appendix B and, subject to final comments by this committee, will be circulated to companies and their directors.

5.8 Recommendation 3: For all directors to provide annual declaration of interests and for all companies to keep an up-to-date register of interests.

Progress: whilst some companies were able to provide annual declaration of interests and an up-to-date register other companies had either incomplete or outdated information.

Action: companies will be reminded that declaration of interests for directors should be completed on an annual basis and an up-to-date register of interests should be maintained.

Companies will be asked to return their annual declarations of interest to the council to ensure compliance with this recommendation.

5.9 Recommendation 4: 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.

Progress: First North Law has recently provided refresher training, organised by one of the Brierley Board companies. This training was offered to directors outside of that company however not all directors could attend. Whilst many of the Brierley Board directors will already have received training and have exhaustive experience in their role it is important that, where this is the case, evidence is kept by companies to support this.

Action: some council officers sit on the boards of more than one council company. To ensure best use of resource, the council will arrange training for directors covering their responsibilities as company directors. It is also vital that directors understand their responsibilities for Health and Safety, this area will also be covered within the training offered. Individual companies will still have the offer of standalone training for their specific company should they prefer.

First North Law and NYES Health and Safety will be procured to provide this training before the end of the calendar year.

Companies will be asked to return their annual training records to the council to ensure compliance with this recommendation.

5.10 Recommendation 5: That the board membership for companies is reviewed and consideration given to whether Elected members should stand down as directors for certain companies (except Veritau and Yorwaste) on the basis that the Shareholder Committee provides the elected member oversight of commercial entities.

Update: due to legacy arrangements the following companies currently have council members on their Board:

- Veritau Ltd, Yorwaste Ltd, NYNet Ltd and Central Northallerton Development Company.

CIPFA guidance – “Local Authority Owned Companies - A Good Practice Guide 2022 Edition” provides recommendations regarding elected members holding directorships in wholly owned local authority companies and recommends that where members are to be appointed to company boards, the authority should ensure that the scope for conflict of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them.

If there is any doubt with regard to likely conflicts of interest that would make it difficult for the board to take decisions effectively, it recommends that elected members should not be appointed to these roles.

The Shareholder Committee has been established to provide elected member governance and oversight for NYC’s commercial entities, therefore - taking into account the CIPFA guidance and potential for conflicts of interest - the recommendation is that elected members will not hold directorships on wholly owned NYC company boards. It is however appreciated that exceptions to this approach may be warranted, particularly where a company is pursuing core, NYC policy objectives. Where any such policy objectives are identified, it may be considered appropriate for elected members to stand as observers, particularly where a company is newly formed. It is proposed that any decisions to include elected members on boards, or as observers, will be delegated, via the Shareholder Committee, to the Leader of the Council (as Chair of the Shareholder Committee) in consultation with the Chief Executive (as Shareholder Representative).

York City Council require their members to sit on the Boards of both Veritau Ltd and Yorwaste Ltd and it is therefore deemed appropriate that this position is mirrored by North Yorkshire Council.

Some Audit Committee members raised concerns with the proposal not to include elected members on company boards. In response this issue was considered further by members of the Brierley Board and NYC officers. Following these discussions, it was concluded that the Shareholder Committee remains the appropriate forum for the oversight and governance of NYC’s commercial entities. The Shareholder Committee is a sub-committee of the Executive and its membership is limited to Executive members. However, to broaden elected member oversight and reflect the Audit Committee feedback, it is recommended that the Chair of Audit Committee and one additional Audit Committee member be invited to attend future Shareholder Committee meetings as observers. They would receive all meeting papers, including those relating to confidential matters.

Action: to cease all elected member directorships for NYC company boards, except where the company is jointly owned with City of York Council and invite the Audit Committee Chair and one other Audit Committee member (as determined by the Leader) to future Shareholder Committee meetings as observers.

5.11 **Recommendation 6: To ensure that each company business plan contains the following listed information unless there are very specific reasons not to:**

- a. Minimum of 3 future years financial forecasting including details of any key assumptions.
- b. Opportunities
- c. Risks
- d. Pipeline of work
- e. Major developments
- f. Key performance indicators
- g. Teckal test results (where applicable)

Update: Business plans are presented to Brierley Board annually for review and challenge. 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 the council felt should be included in every business plan.

Companies were reminded of this key content and asked to ensure that it was included within their 2025 Business Plans.

The key content was provided within the majority of Business Plans, except for the areas indicated below:

- North Yorkshire Highways did not include future year financial forecasting within their Business Plan. However, this is considered reasonable given the nature of their operations, which are largely driven by council-related work and can be variable in nature. NYH maintains a close and robust working relationship with the Council, and the company is subject to strong performance, financial and productivity monitoring. As a result the absence of formal medium term financial forecasting is not viewed as a significant risk or concern.
- Four companies did not provide details of their annual Teckal calculations within their Business Plan albeit one of those companies did confirm compliance within their business plan

Action: supplementary information will be sought from the company that did not provide financial forecasting information within their Business Plan. The Teckal calculations are covered within recommendation 9 below.

5.12 **Recommendation 7: A phased approach to implementing the recommended changes to Back Office Service Level Agreements (SLA's).**

Update: this recommendation is only applicable to some of the companies, and in the majority of cases, the SLAs are in a standard format. Information was, however, only partially complete for one company (NYnet).

Action: to ensure progression against this objective for NYnet.

5.13 **Recommendation 8: 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.**

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

- Turnover of less than £10.2m (£15m from 2025/26)
- Assets worth less than £5.1m (£7.5m from 2025/26)
- 50 or fewer employees

A company may, however, require an audit for reasons of reassurance or due to the industry they operate in. 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 / Assurance
- Full audit (an audit to the same level as the council)

The level of audits undertaken have changed over the last two years and are outlined below:

	2022/23 Audit	2023/24 Audit	Notes
Align Property Partners Ltd	Full	Assurance	
Align Property Services Ltd	Full	Assurance	
Bracewell Homes Ltd	None	None	
Brierley Homes Ltd	Full	Full	
First North Law Ltd	Full	Assurance	
NY Highways Ltd	Full	Full	Full audit required
NYNet Ltd	None	Exempt	
Veritau Ltd	Full	Full	
Yorwaste Ltd	Full	Full	Full audit required

Action: the company audit requirements will again be assessed this year and will consider the revised exemption criteria outlined above. An assurance audit will be requested for Bracewell Homes in future years.

5.14 **Recommendation 9: All teckal companies to complete annual teckal calculations and report within the business plan.**

Update: Teckal calculations, in the context of public procurement, determine if a Local Authority Trading Company qualifies for an exemption from standard procurement rules. This exemption allows councils to award contracts to companies they control without competitive tendering. The Teckal test under the Procurement Act 2023 vertical exemption has been updated to include a new holistic test that encompasses element of both the control and activities tests. To qualify for this exemption at least 80% of the company's turnover (or other appropriate activity-based measure) must be from the controlling council(s) leaving a maximum of 20% for external commercial activity. This 80/20 split is usually calculated on a rolling three-year basis. This ensures that the entity's activities are primarily devoted to the public interest tasks of the controlling authority, rather than operating in the open market.

Four companies did not provide details of their annual Teckal calculations within their Business Plan albeit one of those companies did confirm compliance within their

business plan. Despite the information not being specifically included within company business plans there is confidence that the Teckal position is being actively reviewed and monitored. This is evidenced, for example, by the recent establishment of new Align and Veritau companies to address Teckal compliance issues.

Action: supplementary information will be sought from the companies that did not include details regarding their Teckal position within their business plans and they will be asked to ensure these details are included within future versions.

5.15 Recommendation 10: 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.

Update: Whilst all companies have a risk register it isn't always included in their business plan. There is also a lack of evidence to support the periodic monitoring of the risk register by board members or its annual review. Monitoring risks is a key responsibility for directors and evidence should be available to confirm that they have actively carried out this function.

Action: companies will be reminded that risk registers should be an active document and that discussions within Board meetings should be minuted to confirm that risks are actively monitored.

Companies will also be reminded to include a risk register within their business plans.

5.16 Recommendation 11: For the governance arrangements for Bracewell Homes to be updated to ensure consistency with other Brierley Group entities and the CIPFA best practice guidance

Update: The 2025/26 business plan closely follows the CIPFA guidance and Brierley Board will be presented with a deep-dive at their meeting on 22 September 2025.

Action: No further action recommended.

5.17 Business Continuity

Business Continuity refers to an organisations ability to maintain critical functions and quickly resume operations during and after a disruptive incident. Having an effective plan in place helps to minimise the impact of disruptions, safeguard assets, and protect the company's reputation. Following recent high-profile incidents, it is recommended that the councils emergency planning team schedule meetings with the company directors to help identify any potential gaps and ensure that all critical service areas are adequately covered. This proactive approach will help to strengthen the organisation's resilience and preparedness for any future challenges.

Action: to support council companies with reviewing their business continuity plans and to help identify any potential gaps and ensure that all critical service areas are adequately covered

6.0 FINANCIAL IMPLICATIONS

6.1 There are no financial implications arising from this report.

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.

11.0 RECOMMENDATION(S)

For the Shareholder Committee to:

- i. Note the actions set out in section 5 of this report
- ii. Approve that all elected member directorships on NYC company boards will cease, except where the company is jointly owned with City of York Council.
- iii. Approve that the Chair of Audit Committee and an additional member of Audit Committee be invited to future Shareholder Committee meetings as observers, to widen elected member oversight of NYC companies

APPENDICES:

Appendix A – Company Structure

Appendix B – Managing Conflicts of Interest in Relation to Council Owned Companies policy

BACKGROUND DOCUMENTS:

CIPFA guidance

Gary Fielding
Corporate Director – Resources
County Hall, Northallerton

Report Author – Neil Hughes, Head of Commercial / Kerry Metcalfe
Presenter of Report – Kerry Metcalfe AD 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

The North Yorkshire Council

	Veritau Ltd	NYNet Ltd	Yorwaste Ltd	NY Highways Ltd	First North Law Ltd	Brierley Homes Ltd	Align Property Partners Ltd	Align Property Services Ltd	Bracewell Homes Ltd	The Mercury Housing Co Ltd
Percentage ownership	50%	100%	77.3%	100%	100%	100%	100%	100%	100%	100%
Teckal	✓	✓	✓	✓				✓		✓
Dormant										✓
Company Secretary	Richard Smith	Barry Kahn		Nigel McCloy					Rachel Joyce	
Directors (NYC Employees)	Gary Fielding	Richard Flinton Barry Khan	Karl Battersby	Karl Battersby Trudy Forster	Barry Khan Michael Leah Nigel McCloy	Karl Battersby Barry Khan	Karl Battersby Gary Fielding	Karl Battersby Gary Fielding	Nic Harne Rachel Joyce Paul Foster	Barry Khan Callum McKeon
Directors (NYC Councillors)	Gareth Dadd	Mark Crane Carl Les	John Weighell Brian White							
Directors (Other)	Deborah Mitchell Richard Smith Max Thomas Robert Webb	Richard Doyle Peter Scrope Alastair Taylor	Alexander Boyle Andrew Lee Deborah Mitchell Kallum Taylor	Jamie Crumlish Martin Duffy		David Bowe Stuart Ede Mark Parker	Ronnie Walton	Ronnie Walton		
Monthly Finance	Internal	Internal	Internal	NYC Finance	NYC Finance	NYC Finance	NYC Finance	NYC Finance	NYC Finance	Dormant
Accounts	BHP	Internal	Internal	BHP (aided by NYC)	BHP (aided by NYC)	BHP (aided by NYC)	BHP (aided by NYC)	BHP (aided by NYC)	Wild & Co	nil return filed
Tax	BHP	BHP	PWC	BHP	BHP	BHP	BHP	BHP	Wild & Co	n/a
Audit	BHP	Financial Health Check by BHP	PWC	BHP	BHP	BHP	BHP	BHP	n/a	n/a
Audit level required	Full	Exempt	Full	Full	Assurance	Full	Assurance	Assurance	Assurance	n/a
	Veritau Public Sector Limited	Veritau Tees Valley Ltd	Veritau North Yorkshire Ltd	NYNet 100 Ltd	Brimhams Active Ltd	Central Northallerton Development Co Ltd	Hambleton District Holdings Limited	Maple Park (Hambleton) LLP		Border to Coast Pension Partnership Ltd
Percentage ownership	Ltd by Guarantee	50% owned by Veritau Ltd	100% owned by Veritau Ltd	100% owned by Nynet	Ltd by Guarantee	50%	100%	99%	1% owned by Hambleton District Holdings	9%
Status			Dormant	To be dissolved	To be dissolved		To be dissolved	To be dissolved		



Managing Conflicts of Interest in Relation to Council Owned Companies

Contents

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7. Company Law Provisions and Authorisation of Conflicts

Appendix 1 - Director's Duties

Appendix 2 - Ethical Walls Procedure

1. Summary

This protocol provides a practical guide for officers and councillors who may have a role in connection with the Council's companies. It helps everyone to recognise the interests involved and to avoid and manage any conflict between them.

2. Introduction

- 2.1 The Council has established wholly and partly owned companies, covering a range of offerings. These include selling services and works to the Council and other public bodies and providing vehicles to manage or invest in revenue generating assets such as affordable housing.
- 2.2 Conflicts of interest have the potential to undermine the governance of the Council and its companies.
- 2.3 This protocol therefore enables those involved with Council companies (including councillors, officers, company representatives and contractors) to recognise the interests involved and manage and resolve any potential or actual conflict between them.
- 2.4 It applies to the Council's trading companies and companies that have been set up to provide services directly to or for the Council (frequently known as 'Teckal' companies.)

3. The roles and obligations involved

- 3.1 Council officers and councillors can be appointed as directors of the Council's companies. It is essential, at the outset, for the Council to be clear on the roles that they intend any officer or councillor to have within the Council and how this differs from their role as a director of a Council company.
- 3.2 **Officer of the Council:** the first duty of an officer of the Council is to the Council itself, using their knowledge and professional expertise, and the Council's information and resources, to give advice, make decisions under delegations, and to deploy line management reports generally to deliver the Council's objectives. An officer or councillor can never waive their duty to act in the public interest when exercising their duties to the Council. This will on occasion create an inescapable conflict of interest between an individual's role as a councillor or officer of the Council and as a director of a company (where directors must act in the interests of the company, including shareholders).
- 3.3 **Councillor:** a councillor is democratically elected to represent their community and may be appointed to formal roles or bodies within the decision-making structure of the Council, to make decisions and to shape policy on behalf of the Council. Such roles may involve executive decision making or scrutiny or oversight of the Council or other bodies.

- 3.4 **Director of a company:** a director's first duty is to the interests of the company not to the Council. The Institute of Directors' Corporate Governance Guidance and Principles states: "*an important principle of company law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/or stakeholders*".
- 3.5 Everyone serving in public life must act in accordance with the statutory General Principles of Public Life. They also form the foundation of both the officer and member codes of conduct. As such, officers and councillors, even when serving as directors, must always demonstrate:
- selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership
- 3.6 **Council's Members' Code of Conduct:** councillors must, when acting in their official capacity as councillor, act in accordance with the Council's Members' Code of Conduct contained in the Council's Constitution. The Code requires councillors to register and declare their interests. One of these interests would be their appointment as a director to a Council company. Such transparency is key to instilling public confidence. The Member Code is also clear on the use of information received as a councillor in that councillors must not disclose information given to them in confidence or which they believe, or ought reasonably to be aware, is of a confidential nature, unless they are obliged to by reason of law or have consulted the Monitoring Officer prior to its release.
- 3.7 **The Officer Code of Conduct:** this similarly requires officers (grade K and above) to register any interests and where such officers have declared an interest the detail will be kept in a register by the Council's Monitoring Officer or, in the case of schools, the headteacher or chair of governors. The registered information is not available to the public but is accessible by other officers who have a 'need to know'. The Officer Code also provides that employees must not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. The Officer Code specifically provides that employees involved in the tendering process and dealing with contractors must be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 3.8 **The Guidance Note for Councillors and Officers on Outside Bodies** contained in the Council's constitution: this explains that the duties of a company director are not the same as one's responsibilities as a Councillor or officer and that the company must come first i.e. that directors must act in the

interests of the company, and not in the interests of other parties, including shareholders. It contains information about director's duties and liabilities.

3.9 **Articles of Association:** each of the companies will have its own Articles of Association and these will include their particular requirements for handling conflicts of interest and any process for authorising potential conflicts. The Articles will acknowledge that directors must avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

4. **When do conflicts of interest arise?**

4.1 The Council frequently appoints its nominees as directors to its companies to be responsible for the Council's interests and report back accordingly. There is clear potential for conflict of interests when as directors the individuals also have statutory duties to act in the best interests of the company.

4.2 Councillors and officers should be aware of potential for conflicts of interest when carrying out their roles for the Council, or when acting as directors of companies. Situations can inevitably arise where the same person could be asked to make a decision or advise both the Council and one of its companies. Examples of this include matters of reporting, contractual discussions, investment requests or resourcing agreements.

4.3 Examples of areas where conflicts can arise include:

- **Scrutiny of own decisions/performance:** holding a Council role which involves potential oversight and scrutiny of the company, while also holding a position within the company.
- **Council decision affecting the company:** an officer as director making/advising the Council on a decision under delegated powers for the Council, that affects the company.
- **Personal/private interests:** holding a position as a director while having a private financial or non-financial interest which may conflict or may be perceived to conflict with the role. For example, where a director (or their relative/close friend) has an interest in a supplier or competitor to the company.
- **Gifts & hospitality:** directors receiving benefits from third parties (e.g. potential suppliers to the company) such as gifts and hospitality.
- **Access & use of information, opportunity:** the exploitation by a director of any asset, information or opportunity related to the company. It could be a breach of a director's duty to the company either to disclose confidential company information to the Council, or to disclose confidential Council information to the company.

5. Avoiding conflicts

- 5.1 The Council can minimise the risk of a conflict by considering carefully at the outset who it appoints as a director.
- 5.2 Appointments should relate to the relevant position in the Council, not to a specific individual. It then follows that if a Council appointed director ceases to be an employee or office holder of the Council, they should automatically no longer be able to hold board membership.
- 5.3 Appointments should take account of:
- the benefits of appointing independent directors to the entity
 - the need to avoid Council members and officers also being appointed to senior positions in the company, if such an eventuality is likely to lead to a conflict of interest
 - achieving as wide a range of skills as possible relevant to the company's purposes and aims
- 5.4 Given the nature of their roles, certain officer and councillor positions should not be appointed as directors if there is a likelihood of a conflict of interest. These include:
- Executive Members whose portfolio relates to the aims of the company
 - Corporate Directors whose service areas relate to the aims of the company
 - Elected members appointed to the Shareholder Committee
- 5.5 Officers and councillors must also be aware of what those roles mean for their use of market sensitive information or other confidential intelligence that might be of interest to the other entity but to which they would not be otherwise entitled. Officer and councillors need to be very clear about which role they are performing and not to disclose or otherwise act on the awareness of any such information in the other setting. Consideration should be given prior to the appointment of any officers as to whether any **ethical walls** (see Appendix 2) are necessary – for example restricting an officer's involvement in the 'Council side' of any projects or initiatives that overlap with the aims and activities of the company/joint venture; or their access to confidential information relating to such projects, initiatives and activities. These should be discussed and agreed with the Monitoring Officer. A director will also need to be mindful of the sensitivity of the information gained within the company and take care not to disclose this inappropriately within the Council.

6. Managing potential and actual conflicts of interest

- 6.1 **Registration of interests:** Potential Council appointees to a company should complete a declaration of interest form before their appointment is made.
- 6.2 **Training:** Training on identifying conflicts of interest should be given to each appointee, as arranged or commissioned by the Monitoring Officer.

- 6.3 **Potential conflicts:** Where an officer or councillor considers a potential conflict exists between the Council and their company role, they should confidentially discuss with the Monitoring Officer (or their Deputy) to determine whether a conflict exists on the Council side and with the Company Secretary on the company side.
- 6.4 **Declare interests:** Officers and members who hold roles with the company must declare any interest they have in a proposed transaction in advance of the transaction being entered into.
- 6.5 The declaration of an interest in an existing transaction must be declared as soon as reasonably practicable after the individual concerned becomes aware of it.
- 6.6 If an individual is in any doubt as to whether a conflict exists they should refer the matter to the Council's Monitoring Officer (or their Deputy) for a decision about whether a conflict exists.
- 6.7 **Action where conflict exists (1):** In the event of a conflict of interest, the Monitoring Officer should operate an '**ethical wall**' policy, whereby an information barrier is erected to prevent communication that could lead to the disclosure of information which is confidential to one organisation or the other.
- 6.8 The individual should follow the Council's and the company's procedures for declaring and registering an interest; it's important that both officers and councillors take full note of the content of agendas and whether the business to be transacted raises any potential conflicts; there will be a point on each agenda where interests should be declared.
- 6.9 **Action where conflict exists (2) - abstain from influencing the decision:** having declared a conflict of interest, there should be no taking part in a decision about the issue; directors should be prepared to leave the board meeting and in extreme cases leave the board entirely in cases where such conflicts are structural and could eventually become detrimental to the success of the company.
- 6.10 **Appointment of contract officers:** where the Council is contracting with one of its companies a 'contract officer' and a 'client side officer' will be appointed with primary responsibility for liaison between the company and the Council to lead on managing contractual arrangements with the companies and in holding of the companies to account.
- 6.11 **Annual update of registers of interest:** there should be an annual reminder to each officer/councillor to update their registers of interest to encourage continued thinking about potential or emerging interests.
- 6.12 **Audit:** the Council will use its internal and external audit functions to regularly review the governance arrangements relating to all of its companies to ensure that potential conflicts do not arise or are identified early.

7. Company law provisions and authorisation of conflicts

- 7.1 Appendix 1 contains a summary of directors' duties including the duty to avoid conflicts of interest. More particularly, directors must avoid situations in which they could have a direct or indirect interest that conflicts with the interests of the company. This applies to the exploitation of any property, information or opportunity (regardless of whether the company could take advantage of that property, information or opportunity).
- 7.2 Company law provides that the Articles of Association can make provision for directors and shareholders to authorise a conflict in some circumstances.
- 7.3 Actual or potential conflicts of interest can be authorised in advance in one of two ways, either by the Council in its capacity as the sole member of the company, or by the directors. The articles of association will set out the detail of:
- conflicting interests which are expressly permitted;
 - how, when and where an interest is to be declared by a director;
 - the procedure by which the directors can authorise a conflict; and
 - who can vote and form a quorum.
- 7.4 Directors will need to check and take advice on the provisions in their particular company's articles of association.

Appendix 1 - Director's Duties

UK company law (sections 170-177 of the Companies Act 2006) defines a number of general legal duties for directors of UK companies. These include the following:

The duty to act within powers: Directors must act in accordance with the company's constitution (i.e. the Articles of Association and resolutions of general meetings), and only exercise powers for the purposes for which they are conferred.

The duty to promote the success of the company: directors must act in a way which they consider, in good faith, will promote the success of the company for the benefit of its members (shareholders) as a whole, having regard to:

- (a) the likely consequences of any decision in the long term;
- (b) the interests of the company's employees;
- (c) the need to foster the company's business relationships with suppliers, customers and others;
- (d) the impact of the company's operations on the community and the environment;
- (e) the desirability of the company maintaining a reputation for high standards of business conduct;
- (f) the need to act fairly as between members of the company.

The duty to exercise independent judgement: each director must exercise independent judgment in their decision making.

The duty to exercise reasonable care, skill, and diligence: directors must exercise reasonable care, skill and diligence in their duties. The meaning of 'reasonable care, skill and diligence' is judged according to what may reasonably be expected of a person carrying out the functions of director of that company. It is also judged according to the general knowledge, skill and experience of the individual director.

The duty to avoid conflicts of interest: directors must avoid situations in which they could have a direct or indirect interest that conflicts with the interests of the company. This applies in particular to the exploitation of any property, information or opportunity (regardless of whether the company could take advantage of that property, information or opportunity). However, this duty is not infringed if the matter has been authorised by the board.

The duty not to accept benefits from third parties: directors must not accept benefits from third parties unless the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

The duty to declare interest in proposed transaction or arrangement: If a director has a personal interest, direct or indirect, in a proposed transaction or arrangement with the company, they must declare the nature and extent of that interest to the other directors before the transaction or arrangement takes place.

Local authority nominee directors therefore have a duty (at appointment and otherwise) to properly identify, manage and address any potential conflicts of interest. As Cabinet Office guidance indicates: 'A failure to acknowledge and manage a conflict of interest could cause a significant reputational risk, may result in disqualification and have financial consequences for the director.' It warns that 'some conflicts can also have criminal implications'.

Therefore, Council company directors will need at all times to remain alert to such conflicts, and when any potentially arise ensure that they take appropriate legal and other advice.

Appendix 2 - Ethical Walls Procedure

If the Monitoring Officer feels that there is a risk of conflict, or that the interest of the organisations is not best served by an officer or councillor acting for both, they will invoke this procedure.

When a conflict or potential conflict is identified, the officer or member should alert the Monitoring Officer or the deputy. The Monitoring Officer will provide advice to the individual concerned on whether there is a conflict.

The Monitoring Officer will maintain an audit trail of their actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified, the Monitoring Officer will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officer will alert those on the list, relevant lead officers and councillors and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the council company, and the officers representing it, with full regard to the issue in question, as if they were an external organisation. That is, information supplied by the other party should be thoroughly and critically examined, and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence, as opposed to verbal communications, as such documents could later be relied upon in legal action.

It should be agreed where files and electronic correspondence should be held, and neither party should access information held by the other. Appropriate access restrictions will be established by IT Services for information held electronically.

Officers should only advise councillors and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the wall, and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question and does not extend to any other areas of work.

When the issue in question has been successfully concluded, the Monitoring Officer should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.