

North Yorkshire County Council

Corporate & Partnerships Overview & Scrutiny 2 December 2019

Brierley Group Governance Arrangements

Report of the Assistant Director, Resources & Commercial

1.0 Purpose of the Report

1.1 To describe the existing governance arrangements for the Brierley Group.

2.0 Executive Summary

2.1 It is important that the Council ensures that the companies act in the best interests of the Council overall and contributes to the Council's objectives. This report describes the existing governance arrangements for these companies and how they help ensure that the Council properly exercises its rights as the owner or majority shareholder of our range of companies (as distinct from a customer perspective) and ensure they sit within the strategic direction of the Council.

3.0 Background

3.1 Local Authorities have been encouraged to create companies through legislation for a variety of reasons, not least to generate profit for the public purse in times of austerity.

3.2 It is important to ensure that the Council, as a shareholder/trustee/owner of these organisations has robust governance arrangements to exercise its relevant powers to ensure that they operate under and contribute to delivering the Council's priorities.

3.3 Further, proper governance arrangements should include safeguards and arrangements for oversight of the Council's ownership rights to protect the Council from poor performance, inappropriate risk taking and potential decisions that would not be in the best interests of the owner of the Companies.

3.4 Best practice determines that the Council as either the sole owner or a part shareholder of these companies, should have robust arrangements to carry out the following activities:

- Being clear and transparent that the Council is the owner/joint owner of the company.
- Approve and sign off strategic business plans.
- Monitor performance and financial delivery against strategic business plans.
- Exercise decision-making over reserve matters.
- Determine remuneration of Directors.
- Delegating certain matters for each Company to be 'Reserved' so that they need approval of the Council as the shareholder/owner

3.5 The Council currently has ownership rights for the following companies:

- (a) NYnet (100%)
- (b) Yorwaste (77.7% owned by NYCC)
- (c) First North Law (100%)
- (d) Align Property Partners (100%)
- (e) Brierley Homes (100%)
- (f) Veritau (37.5% owned by NYCC)

In addition the Council has historically sold a number of services to schools which it now operates under the branding of "NY Education Services", but this is not set up as a separate company.

4.0 Governance Hierarchy

4.1 As diagrammatically shown in Appendix 2, the governance structure is tiered into multiple levels:

- (a) Executive
- (b) Shareholder Committee
- (c) Shareholder Group Representative (Group Chief Executive)
- (d) Individual Company Boards

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

5.0 Shareholder Committee

5.1 As a shareholder, the Council's role is not to manage the business on a day to day level. The Company's Board will be responsible for running the business and should be given sufficient freedom to deliver the strategic and operational priorities of the Company. The Board should have Directors with the right skill to be able to manage the business of the company.

5.2 The Shareholder Committee is a sub-committee of the Executive and carries out the functions as identified in Appendix 1. Certain functions are still be retained by the Executive as identified in the Appendix however the vast majority of formal decision making on behalf of the Council regarding the Companies is be made by the Shareholder Committee.

5.3 The Shareholders Committee is chaired by the Leader of the Council and is comprised of two additional Executive members. The Shareholder Committee meets every six months and monitors the performance of all the companies.

6.0 NYCC Commercial Stakeholder Board – advisory body to the Shareholders Committee (known as the 'Brierley Group Board')

6.1 Regular discussion between the Members of the Shareholders Committee and senior officers occur which ensures that there is a clear and agreed strategy on commercial matters. This Advisory Board is called the "*Brierley Group Board*" which consists of:

- i. The Leader
- ii. Two Executive Members
- iii. Chief Executive
- iv. Corporate Director, Strategic Resources
- v. Assistant Chief Executive, Legal & Democratic Services

vi. Assistant Director, Resources & Commercial – in attendance

- 6.2 This Board receives a report covering the overall performance of the Brierley Group and of each individual Company within, including key issues and risks and the financial performance. The Board also invite company representatives to a “deep dive” on a rotating basis, where a more detailed discussion takes place with the relevant MD from each respective Company.
- 6.3 Each Company produces its own Business Plan which is then monitored throughout the year on performance against the plan. The Shareholder Committee approves each final business plan and therefore it is helpful that the Brierley Group Board has early sight of and the ability to shape the Business Plan before it is finally submitted to the Shareholders Committee for approval. This then ensures that the Board can have appropriate input and understanding in considering the Company’s targets and objectives. Such early dialogue and engagement from the company with its shareholders is seen to be good practice.

7.0 Sector Practice Comparison

- 7.1 In terms of the commercial agenda, North Yorkshire County Council is more progressive than many other authorities, including its governance arrangements. However comparisons can be made – where information is available on the approach and practice within the sector.
- 7.2 A number of Councils have comparable governance including:
- (a) City of York Council
 - (b) Harrow London Borough Council
 - (c) Cheshire East Council
 - (d) Waltham Forest Council

8.0 Recommendation(s)

- 8.1 Note the governance arrangements outlined in the report.

Appendices:

Appendix 1: Terms of reference of the Shareholder Committee and Shareholder Group Representative

Appendix 2: Governance Structure

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Terms of reference of the Shareholder Committee and Shareholder Group Representative

Delegations of decision-making powers for companies

For matters relating to a company which would require a Council decision or where approval of the Council is required within the company's governance arrangements the following distribution of powers will apply:

Decisions reserved to the Executive

1. Approving steps to wind up a company.
2. Making loans in excess of (£500k) other than by way of normal trade credit.

Decisions which would fall within the remit of the Shareholders Committee

3. Approving or making amendments to the strategic or business plans.
4. Monitoring the strategic and business plans
5. Acquiring shares in another company.
6. Changes to company governance eg changes to Articles, Shareholder Agreements.
7. Establishing subsidiary companies.
8. Approving disposals of assets valued over (£500k) [subject to the Company's articles of association]
9. Approving borrowing in excess of (£500k). [subject to the Company's articles of association]
10. Entering, amending or terminating any agreements which create a potential liability for the company in excess of £500k. [subject to the Company's articles of association]
11. Making changes to the nature of the company's business.
12. Matters relating to the approval of dividends requiring Council consent.
13. Reviewing the decisions of the Chief Executive Shareholder's representative

Decisions which fall within the remit of the Chief Executive Shareholder Group Representative

14. Monitoring the strategic and business plans and approving emergency amendments.
15. Approving the appointment or dismissal of company Directors including the Chair.

16. Matters relating to the terms and conditions of company Directors.
17. Matters relating to the entering of any contracts with company Directors.
18. Matters relating to the employment of senior management team of the company.
19. Changes to share capital and admission of shareholders.
20. Making changes to the nature of the company's business.
21. Approving changes to the area in which the company works.
22. Altering the company's name or registered office.
23. Where required giving any further specific approval to a matter provided for within the approved business plan.
24. To Act on behalf of the Shareholder's Committee to monitor Performance of the Company
25. To take appropriate action and decisions as the Shareholder as directed by the Shareholders Committee
26. To take all other decisions as the Shareholder as provided for by legislation or the Company's governance documents.

Governance Diagram

