

## THE CHAIR AND ALL MEMBERS OF THE COUNCIL

Tuesday 21 March 2023

Dear Member

### COUNCIL - WEDNESDAY 29TH MARCH, 2023

You are hereby summoned to attend a meeting of the Council of the Borough of Middlesbrough to be held on **Wednesday 29th March, 2023** at **7.00 pm** in the Council Chamber to transact the following business, namely:-

1. Apologies for Absence
2. Declarations of Interest  
To receive any declarations of interest.
3. Minutes - Ordinary Council meeting - 18 January 2023, Extraordinary Council meeting - 24 February 2023 - Council Budget meeting - 27 February 2023 5 - 18
4. Announcements/Communications  
To receive and consider any communications from the Chair, Mayor, Executive Members or Chief Executive (if any).
5. Questions from Members of the Public (if any).
6. Mayor's Statement and Report
7. Executive Member reports 19 – 70
8. Report of the Overview and Scrutiny Board 71 – 76
9. Urgent Items  
To consider and Deal with any urgent business brought before the Council by the Proper Officer (if any).
10. Members' Question Time
11. Notice of Motions 77 – 78

12. Notice of Urgent Motions (if any)

13. Border to Coast Governance Arrangements

79 - 166

A handwritten signature in black ink, reading "CJ Benjamin". The signature is written in a cursive style with a large initial "CJ".

Charlotte Benjamin,  
Director of Legal and Governance Services

PLEASE NOTE THERE IS RESTRICTED  
DISABLED ACCESS TO THE COUNCIL CHAMBER

Inspection of Papers – Documents referred to on this Summons may be downloaded from the Council's Website.

Questions / Motions – Details of questions or notices of motion received and not enclosed with the Summons will be circulated prior to the meeting.

Should you have any queries in regard to the items on this agenda please contact Bernie Carr, Democratic Services on (Direct Line 01642 729714 or e-mail on: [bernie\\_carr@middlesbrough.gov.uk](mailto:bernie_carr@middlesbrough.gov.uk)).

Address: Democratic Services, Middlesbrough Council, Town Hall, Middlesbrough TS1 9FX

Website: [www.middlesbrough.gov.uk](http://www.middlesbrough.gov.uk)

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**COUNCIL**

A meeting of the Council was held on Wednesday 18 January 2023.

**PRESENT:** Councillors J Hobson, A Bell (Vice-Chair), I Blades, D Branson, C Cooke, B Cooper, D Coupe, D Davison, S Dean, C Dodds, T Furness, TA Grainge, A Hellaoui, S Hill, C Hobson, B Hubbard, N Hussain, D Jones, L Mason, T Mawston, D McCabe, M Nugent, J Platt, E Polano, J Rathmell, J Rostron, R Sands, M Smiles, M Storey, P Storey, J Thompson, Z Uddin, J Walker and S Walker

**OFFICERS:** S Bonner, B Carr, G Field, A Pain, T Parkinson and A M Wilson

**APOLOGIES FOR ABSENCE:** Councillors R Arundale, N Gascoigne, T Higgins, A High, L Lewis, C McIntyre, J McTigue, A Preston (The Mayor), G Purvis, D Rooney, M Saunders, G Wilson and C Wright

22/65 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

22/66 **MINUTES - COUNCIL - 30 NOVEMBER 2022**

The minutes of the Council meeting held on 30 November 2022 were submitted and approved as a correct record, subject to the following amendment:

Page 3, Fourth line of paragraph 1 should read:

The Captain Cook Birthplace Trust had started work on the visit over 3 years ago.

22/67 **ANNOUNCEMENTS/COMMUNICATIONS**

The Chair of the Council announced with sadness, the death of Thomas Wilkinson former Councillor for Park Ward 1957 – 1964. He requested members to join him in a minutes' silence as a mark of respect.

Councillor Davison paid tribute to Thomas Wilkinson.

22/68 **QUESTIONS FROM MEMBERS OF THE PUBLIC (IF ANY).**

There were no valid questions submitted from members of the public, within the required timescale for this meeting.

22/69 **MAYOR'S STATEMENT AND REPORT**

The Chair advised that as the Mayor had submitted apologies, there was no report from the Mayor for this meeting.

22/70 **EXECUTIVE MEMBER REPORTS**

The Chair invited Members to raise items for general discussion arising from the Information Booklet of Executive Member reports which detailed activities carried out within the respective Executive Member portfolios (Section 1), Executive decisions taken (Section 2) or to be taken where known, prior to and following the meeting (Sections 3 and 4).

*Question in relation to report of Deputy Mayor and Executive Member for Children's Services*

**Councillor C Hobson in relation to why the opening of Outwood Riverside new school had been put back and whether this would affect pupils and availability of places.**

The Deputy Mayor and Executive Member for Children's Services advised that the new school

was supposed to have been completed this year, however the opening date had been put back to May 2025. The building of the school was a project between the Department for Education and the contractor. Because of delays, the Department for Education had decided to engage a different contractor. Work would commence on the design of the new school in February 2023.

The Outwood Riverside school would remain in its temporary accommodation in Russell Street until 2025 but they would be taking on an additional 120 pupils. The DFE had also agreed to provide extra funding to build further temporary accommodation for the year after to ensure that there were enough places for all the children.

*Questions in relation to report of Executive Member for Adult Social Care, Public Health, Public Protection and Digital Inclusion*

**Councillor Blades in relation to Support for Hospital Discharge over the Christmas and New Year Period and minimising delays.**

In response to the question from Councillor Blades, the Executive Member for Adult Social Care, Public Health, Public Protection and Digital Inclusion advised that at a recent meeting held the day before it had been advised that the reasons for issues at the hospitals over Christmas time had been put down to the increase in cases of covid, flu and other reasons.

The Executive Member thanked the Council's Social Services department and the Director of Adult Social Care and Health Integration who had worked hard over the Christmas period. The Managing Director of James Cook University Hospital (JCUH) had thanked the Council's Social Services department for facilitating the support for hospital discharge.

The crisis at the moment in hospitals was being caused by cases of covid and the pandemic and although figures were reducing, it was anticipated that they would rise in the future. The Executive Member advised that he accepted the points raised by Councillor Blades and he would raise them with the appropriate people.

**Councillor Branson in relation to Support for Hospital Discharge over the Christmas and New Year Period and the fact that the country was spending 20% less per capita than other European countries despite the fact that the country had an expanding older population.**

The Executive Member advised that many problems faced by the hospital were caused by PFI as it was costing £17m per quarter. This money should be directed at spending more money on funding doctors and nurses.

*Question in relation to report of Executive Member for Culture and Communities*

**Councillor Cooke in relation to the Dorman Museum and Teesside Archives**

Councillor Cooke thanked Councillor P Storey and the staff of the Dorman Museum and Teesside Archives on the success of the Festive market. Councillor Cooke urged Executive Members to become involved in future community events.

The Executive Member thanked the councillors for their work on the Festive market.

*Question in relation to report of Executive Member for Environment*

**Councillor Thompson in relation to Area Care**

In response to the question from Councillor Thompson, the Executive Member for Environment advised that he could not provide any figures in relation to the number of new trees that had been lost and the cost to the council. He advised that the vast majority of trees that had recently been planted had been 50% funded by the Forestry Commission and over 550 trees had been planted in the last 6 months.

*Question in relation to report of Executive Member for Finance and Governance*

**Councillor Blades in relation to Council Tax**

In response to the question from Councillor Blades, the Executive Member for Finance and Governance advised that Council Tax in principle, was arguably regressive. The Executive Member explained that Council Tax itself did not pay for the full scope of council services, they were paid for by a combination of Council Tax and central government funding.

The Executive Member stated that he would welcome feedback from members with regard to their views on what would be the right level of increase of Council Tax given the current budget situation of the Council.

*Questions in relation to report of Executive Member for Neighbourhood Safety*

#### **Councillor Furness in relation to Fly tipping**

In response to the question from Councillor Furness with regard to budget cuts affecting the Neighbourhood Safety Team, the Executive Member for Neighbourhood Safety advised that he agreed with the concerns of the councillor regarding Street Wardens and Area Care. The Executive Member stated that the team were doing a great job and in his view the service was needed.

#### **Councillor Blades in relation to Town Centre ASB & Crime Action Plan**

In response to the question from Councillor Blades in relation to the number of Street Wardens, the locality of their work and the nature of their work, the Executive Member for Neighbourhood Safety advised that some Street Wardens had left the job because of concerns regarding job security. Street Wardens were based in the town centre and some of the other Wards but there was not as many Street Wardens as there used to be. The Executive Member stated that the town did need Street Wardens, so if members were able to propose any alternative to the proposed cuts, he would be grateful if they would put them forward. The Executive Member advised that he would forward the current number of Street Wardens in due course.

*Question in relation to report of Executive Member for Regeneration*

#### **Councillor Branson in relation to market the premium housing sites at Nunthorpe Grange and Newham Hall**

In response to the question from Councillor Branson in relation to the Council's proposed plans in relation to the provision of infrastructure, transport and facilities following the increase in the number of houses, the Executive Member for Regeneration advised the position so far in respect of Newham Hall, was that the Council was working with Homes England to bring the site forward as it was too big for the Council to complete on its own. The site was likely to come forward for approval in the summer. The site would accommodate one thousand new homes. Infrastructure and facilities would be provided but that would be discussed at a later date.

In terms of Nunthorpe Grange, the Executive Member advised that there was currently no activity to bring forward the site in relation to this site at the current time. Once the application had been determined by the Planning and Development Committee. The Executive Member advised that the Council would be interested in working with anyone interested in developing community facilities once the houses were built.

*Question in relation to report of Executive Member for Young Adults and Democratic Engagement*

#### **Councillor M Storey in relation to The Times Ahead.**

In response to the question from Councillor M Storey in relation to the times ahead, the Executive Member for Young Adults and Democratic Engagement advised that in terms of the Elections Bill, the Council was looking to encourage participation in council elections by providing better voter education by making it more accessible and promoting voter registration. This had already been promoted as part of the annual canvass.

The Council also aimed to encourage citizens to become more involved by encouraging them

to ask questions or take part in public consultations and this could be promoted through the use of Facebook or Instagram.

The Executive Member also stated that he was looking at ways to make the Executive accountable to the public rather than just the politicians. He also stated that the Council needed to foster a culture of engagement and make greater use of community service projects. The Executive Member made reference to the various litter picking projects throughout the town and the use of community gardens because research had showed that those residents who had a stake in the area were more likely to vote in elections.

The Executive Member advised that part of his portfolio involved youth engagement and he had been talking to children about the benefits of joining a school council, speaking about mental health and environmental issues.

The Executive Member advised that he had visited schools to talk about involvement in politics and what it entailed. The Executive Member also relayed any feedback on issues raised by the children to the various Council departments.

Reference was also made to the changes in the voting systems for the Mayoral and the Police and Crime Commissioner elections. The elections would in future be decided by the first past the post system rather than the supplementary vote system.

The Executive Member advised that the Council needed to increase the use of social media tools to highlight any changes to election procedures. He highlighted that the Government was launching a Note to Self to promote the fact that electors would in future need to produce photographic voter ID before being able to vote in future elections and this was being actively promoted by the Council.

22/71

#### **REPORT OF THE OVERVIEW AND SCRUTINY BOARD**

The Vice-Chair of the Overview and Scrutiny Board presented a report, the purpose of which was to provide an update on the current position regarding progress made by the Overview and Scrutiny Board and each of the individual Scrutiny Panels.

The Chair invited members to note the report.

**ORDERED** that the report be noted.

22/72

#### **CALCULATION OF COUNCIL TAX BASE FOR 2023/24**

The Executive Member for Finance and Governance and the Director of Finance submitted a report, the purpose of which was to set the council tax base for the financial year 2023/24 by the statutory deadline of 31 January 2023.

The Executive Member for Finance and Governance presented the report.

The Chair invited the Deputy Monitoring Officer to conduct a recorded vote.

Prior to the vote, the Deputy Monitoring Officer reminded Members that in accordance with Section 106 of the Local Government Finance Act 1992, any member that was more than 2 months in arrears with their Council Tax account, must declare an interest and must not take part in the vote.

The Deputy Monitoring Officer noted that no declarations of interest had been declared and proceeded to conduct a recorded vote.

The result of the vote was as follows:

Votes For: (34)

Councillors Bell, Blades, Branson, Cooke, Cooper, Coupe, Davison, Dean, Dodds, Furness, Grainge, Hellaoui, Hill, C Hobson, J Hobson, Hubbard, Hussain, Jones, Mason, Mawston, McCabe, Nugent, Platt, Polano, Rathmell, Rostron, Sands, Smiles, M Storey, P Storey,



Thompson, Uddin, J A Walker, S Walker

Against: (0)

Abstentions: (0)

Following the recorded vote, it was **ORDERED** as follows:

That Council:

- Notes the contents of the report.
- Approves the council tax base for 2023/24 as 35,749.
- Approves 2,269 and 1,319 as the council tax bases for the parishes of Nunthorpe and Stainton & Thornton respectively for 2023/24.
- Following approval, agrees to notify the Police and Crime Commissioner, the Cleveland Fire Authority, and the Parish Councils of the 2023/24 council tax base.

**22/73 CAPITAL STRATEGY 2022/2023 MID YEAR UPDATE**

The Executive Member for Finance & Governance and the Director of Finance (S151 Officer) submitted a report, the purpose of which was to consider the current position on the Council's Capital Strategy for 2022/23 and approve the change being proposed on Minimum Revenue Provision for 2022/23 which was approved by Executive on 6 December 2022.

The Executive Member for Finance and Governance presented the report and responded to a query from Councillor Hellaoui.

The Chair invited the Deputy Monitoring Officer to conduct a vote.

Following the vote, it was **ORDERED** as follows:

That the Council:

- Note the current position on the capital strategy for 2022/23.
- Approve the change being proposed on Minimum Revenue Provision for 2022/23.

**22/74 URGENT ITEMS**

There were no urgent items submitted within the specified deadlines for this meeting.

**22/75 MEMBERS' QUESTION TIME**

There were no Members Questions submitted within the specified deadlines for this meeting.

**22/76 NOTICE OF MOTIONS**

There were no Notice of Motions submitted within the specified deadlines for this meeting.

**22/77 NOTICE OF URGENT MOTIONS (IF ANY)**

There were no Notice of Urgent Motions submitted within the specified deadlines for this meeting.

**22/78 CORPORATE GOVERNANCE IMPROVEMENT PLAN AND PROGRESS UPDATE**

The Mayor and the Chief Executive submitted a report, the purpose of which was to present the work of the Corporate Governance Improvement Board.

The Board was given the mandate to develop and agree a detailed improvement plan to drive the Council's response to the issues identified by the Council's external auditors EY and further investigated by CIPFA.

In the absence of the Mayor, the Executive Member for Finance and Governance presented the report.

**ORDERED** that Council note the progress made to date and the revised improvement plan.

**COUNCIL**

A meeting of the Council was held on Friday 24 February 2023.

**PRESENT:** Councillors J Hobson, I Blades, D Branson, C Cooke, B Cooper, D Coupe, S Dean, T Furness, N Gascoigne, A Hellaoui, A High, C Hobson, B Hubbard, N Hussain, L Mason, T Mawston, D McCabe, C McIntyre, J McTigue, M Nugent, E Polano, J Rathmell, D Rooney, J Rostron, M Storey, P Storey, J Thompson, J Walker and G Wilson

**OFFICERS:** C Benjamin, S Bonner, B Carr, G Field, R Horniman, A Hoy, T Parkinson and A Perriman

**APOLOGIES FOR ABSENCE:** Councillors R Arundale, A Bell (Vice-Chair), D Davison, C Dodds, TA Grainge, T Higgins, S Hill, D Jones, L Lewis, J Platt, A Preston (The Mayor), G Purvis, R Sands, M Saunders, M Smiles, Z Uddin, S Walker and C Wright

22/79 **DECLARATIONS OF INTEREST**

Councillor Cooper declared a non-pecuniary interest in the agenda item as the proposals affected the Ward that he represents.

22/80 **ANNOUNCEMENTS/COMMUNICATIONS**

The Chair announced, with sadness, the death of two former Middlesbrough councillors.

Councillor Anthony Bell who was the councillor for Acklam Ward 1973 – 1976 and Linthorpe Ward 1979 – 1987, and long serving former councillor, Bob Brady, MBE, who was the Civic Mayor in 1994 and the first Deputy Mayor under the Elected Mayor system.

The Chair advised that Bob Brady was the councillor for various wards throughout his time as a councillor including Thorntree, Grove Hill, Beckfield and Westbourne Ward

All those present at the meeting stood in silence as a mark of respect.

22/81 **MAYORAL DEVELOPMENT CORPORATION**

The Chair invited the Monitoring Officer to outline the reasons for calling the Extraordinary Council meeting.

The Monitoring Officer outlined the reasons for calling the meeting. The Secretary of State's consultation in relation to the Middlesbrough Development Corporation (MDC) would take place in February and March, but the Council's views on the key issues were required at the earliest opportunity.

Assuming the order laid before Parliament on 6th February was successful, the MDC would come into being on 27th February. The next ordinary meeting of the Council was scheduled for 29 March 2023, which would be after the date that the MDC was due to be established. It was therefore considered imperative, that members were given the opportunity to give their views on the establishment of the MDC prior to 27 February.

The Executive Member for Regeneration presented a report, the purpose of which was to seek endorsement for a clear Council position on the formation of a Mayoral Development Corporation for Middlesbrough Town Centre and Middlehaven.

As part of the process of forming the corporation, the Council would be asked by the Secretary of State for Levelling Up, Housing and Communities for its views on a number of principles, which were set out in the report.

The report also sought endorsement to the transfer of a defined list of Council assets to the corporation in the event of its formation being confirmed.

The Executive Member advised that if any members had any questions in relation to the report, to email them direct to the elected Mayor.

The Chair invited members to comment or ask questions on the report.

Members commented on the report.

The comments included:

- Concerns regarding the number of assets to be handed over to the MDC.
- That the £18m of investment including £8m to transform Gresham should be handed over to Middlesbrough Council, regardless of whether the MDC was established.
- Concerns that the plans could mean a loss of income for the Council which could result in it not being able to fund its services.
- Concerns regarding the make up and the expertise of the proposed Board.
- Queries whether the MDC was required, given the amount of regeneration that had already taken place in the town.
- Concerns regarding planning control and the potential loss of planning fees.
- Queries regarding when the detailed consultation information would be available.
- Concerns regarding the lack of political balance on the Board
- Concerns regarding what would happen to the assets once they were handed over to the Board.
- Queries whether the people currently in control of the assets had been consulted.
- Concerns about the bus station being included as part of the asset transfer.
- Queries regarding whether any of the income from the MDC would be guaranteed.
- A member stated that at the briefing meeting held for members regarding the establishment of the MDC, members had been advised that the money made by the TVCA as part of the MDC would be paid to the Council.
- Concerns that the MDC did not have a planning officer.
- Concerns regarding where any capital receipts and rents would be allocated.
- Concerns regarding the amount of money to be paid for the assets.
- Concerns regarding if the Council did not endorse the proposals that they would not be able to carry on with the regeneration of the town.
- The development of the MDC represented a fantastic opportunity for the town and would unlock £18m investment in the town.
- Transfer of assets could attract £4.9m per annum.
- Concerns regarding attendance at members briefing held in relation to the MDC.
- The Secretary of State would have the power to create the MDC regardless of the outcome of the vote.
- The benefits of the creation of the MDC outweighed the disadvantages.
- The creation of the MDC would bring progress and funding to the town.

The Chair invited the Monitoring Officer to conduct a vote in relation to the recommendations contained within the report.

Prior to the vote being taken, the Monitoring Officer clarified that the power of setting up the MDC rested with the Secretary of State. Members were being asked to endorse the proposed principles around the formation of the Mayoral Development Corporation, as set out in the report, to inform a response to the government consultation.

Following a vote, it was **ORDERED** that the Council do not endorse the proposed principles around the formation of the Mayoral Development Corporation, as set out in the report, to inform a response to the government consultation.

**COUNCIL**

A meeting of the Council was held on Monday 27 February 2023.

**PRESENT:** Councillors J Hobson, A Bell (Vice-Chair), I Blades, D Branson, C Cooke, B Cooper, D Coupe, D Davison, S Dean, T Furness, TA Grainge, A Hellaoui, S Hill, C Hobson, B Hubbard, N Hussain, D Jones, L Mason, T Mawston, D McCabe, C McIntyre, J McTigue, M Nugent, E Polano, A Preston (The Mayor), J Rathmell, D Rooney, J Rostron, R Sands, M Saunders, M Smiles, M Storey, P Storey, J Thompson, J Walker, S Walker, G Wilson and C Wright

**OFFICERS:** C Benjamin, S Bonner, R Brown, B Carr, Z Farrow, G Field, A. Glover, L Grabham, A Humble, D Johnson, A Pain, J Savage, E Scollay, H Seechurn, K Whitmore and A Wilson

**APOLOGIES FOR ABSENCE:** Councillors R Arundale, C Dodds, N Gascoigne, T Higgins, A High, L Lewis, J Platt, G Purvis and Z Uddin

22/82      **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

22/83      **ANNOUNCEMENTS/COMMUNICATIONS**

The Chair reminded members to use the microphones when speaking at the meeting.

22/84      **PAY POLICY STATEMENT**

The Director of Legal and Governance Services and the Executive Member for Finance and Governance submitted a report, the purpose of which was to set out the Pay Policy Statement 2023/2024 for consideration by full Council.

The Executive Member for Finance and Governance presented the report,

The Pay Policy Statement set out the Council's policies on remuneration of its staff in accordance with Section 38 of the Localism Act 2011. The policy was required to be approved by full Council and was subject to annual review.

The Pay Policy Statement set out details of the various employee policies relevant to the remuneration of Chief Officers in operation within the Council. The content of those policies included within the statement would continue to be determined by current mechanisms.

The Chair invited the Monitoring Officer to conduct a vote with regard to the Pay Policy Statement 2023/2024.

Following a vote, it was **ORDERED** as follows:

That Council agree the Pay Policy Statement 2023/24.

22/85      **LOCAL COUNCIL TAX SUPPORT FOR 23/24**

The Director of Finance and the Executive Member for Finance and Governance submitted a report, which sought approval for the amendment of the Council's Council Tax Support (CTS) scheme for 2023/2024.

The Executive Member for Finance and Governance presented the report.

Each Billing Authority in England had a statutory requirement to make a Council Tax Support scheme by no later than 11 March each year, which was required to be approved by full council.

With the exception of minor legislative amendments made this year by central government/DLUHC, the scheme itself remained unchanged from 2022/23, however the proposed recommendation was to uplift the income bandings for 2023/24 to reflect the recent inflation rise for working age benefits. This recommendation was proposed in order to maintain the current level of support for applicants, recognising the financial challenges placed on residents due to the Cost of Living and Energy crises.

The implications of the recommendations had been considered by the appropriate officers of the Council and were set out in the main body of the report.

The Chair invited the Monitoring Officer to conduct a recorded vote on the recommendation contained in the report.

The outcome of the recorded vote was as follows:

Votes For: (38)

Mr A Preston (Elected Mayor) Councillors Bell, Blades, Branson, Cooke, Cooper, Coupe, Davison, Dean, Furness, Grainge, Hellaoui, Hill, C Hobson, J Hobson, Hubbard, Hussain, Jones, Mason, Mawston, McCabe, McIntyre, McTigue, Nugent, Polano, Rathmell, Rooney, Rostron, Sands, Saunders, Smiles, M Storey, P Storey, Thompson, J A Walker, S Walker, Wilson, Wright

Votes Against: (0)

Abstentions: (0)

Following the recorded vote, it was **ORDERED** as follows:

That the revised Council Tax Support (CTS) scheme for 2023/24, be approved.

22/86

#### **LEGAL, FINANCIAL AND PRACTICAL CONSEQUENCES OF FAILURE OR DELAY IN SETTING COUNCIL TAX**

The Mayor, the Director of Finance and the Director of Legal and Governance Services submitted a report, the purpose of which was to set out the legal, financial and practical consequences of the failure or delay in setting the Council Tax.

The report highlighted the following:

- The Council had a legal duty to set a lawful budget before 11 March 2023
- Members jointly and severally (individually and collectively) had a fiduciary duty to Council Taxpayers
- This meant that members had a duty to facilitate, rather than obstruct, the setting of a lawful budget, a process that requires flexibility and compromise
- Failure to set a lawful budget in time would lead to loss of revenue, significant additional administrative costs as well as reputational damage for the council
- Failure to set a budget could lead to intervention from the Secretary of State under section 15 of the Local Government Act 1999 (and this had happened in number of councils)
- Failure to set a budget could give rise to personal liability for individual Members for misfeasance in public office, negligence or breach of statutory duty.

The Chair requested that members note the report.

**ORDERED** that the report be noted.

22/87

#### **BUDGET 2023/24 - S25 REPORT OF THE CHIEF FINANCE OFFICER**

The Director of Finance (S151 Officer) submitted a report, the purpose of which was to assist members in fulfilling their responsibility to set a balanced budget for 2023/24.

Section 25 of the Local Government Act 2003 required the Chief Finance Officer to report on the robustness of the budget estimates and the adequacy of the financial reserves. The Act

also required the Council to have regard to the report when making decisions about the budget. The Chief Finance Officer was defined in Section 151 of the Local Government Act 1972 and was fulfilled by the Director of Finance.

The report was in respect of the Budget 2023/24 as set out in the Revenue Budget, Council Tax, Medium Term Financial Plan, and Capital Strategy 2023/24 report to this Council.

This report covered:

- An overview of current financial standing.
- An assessment of the robustness of the 2023-24 budget setting process for both revenue and capital.
- An assessment of key risks that may impact the budget 2023-24.
- An assessment of the overall adequacy of reserves to contain financial risk and ensure the sustainability of the Council over the financial year 2023-24, and
- An indication of future direction of travel for the council beyond 2023-24.

In summary, the proposals to establish a net budget requirement of £126.4m and council tax requirement of £67.3m for 2023/24, as set out in the Revenue Budget, Council Tax, Medium Term Financial Plan, and Capital Strategy 2023/24 report to this Council, were robust and provided sufficient resource to enable the council to set a balanced budget.

Reserves were adequate insofar as the minimum level of general balance was set at £12m, based on risk assessment; there were currently no plans for its use being the fund of last resort. However, there was little resilience in earmarked reserves, and these were at a critical level. The lack of substantial earmarked reserves meant that the overall reserves position, whilst adequate, was fragile and could require a reliance on cost control or the delivery of additional savings in the event of any unplanned costs.

The budget gap 2023/24 of £14.9m required delivery of £9.4m savings in year (full year: £12.4m). The budget carried significant risk especially around the volatility of the budget for children's services and the delivery of approved saving plans in a timely way. The Council was advised to have an unrelenting focus on the delivery of saving plans and demand mitigation during the year. The delivery of children's financial improvement plan would be overseen by the Children's Finance Focus Group. Some level of contingency (£1.3m) and limited reserves (social care transformation – currently estimated to be £1.7m at the end of 2022/23) were held to mitigate these risks. In the event of significant unexpected cost pressures emerging during the year, further savings would be required from across the Council, and early consideration was advisable to forward plan future savings so they could be brought forward as necessary.

The Council's current financial standing reflected a number of weaknesses: relatively low levels of reserves; significant demands on services and governance weaknesses limiting the delivery of value for money for the people of Middlesbrough, resulting in a best value improvement notice issued in January 2023. The Council had in place a Governance Improvement Board under the purview of the LGA and CIPFA. It was imperative there was organisational grip to deliver planned improvements to ensure council money was spent wisely and this would require a significant programme of work during 2023/24 to be delivered at pace that focussed on embedding budget management and improved accountability arrangements within the organisational culture.

The CFO did not consider Middlesbrough Council to be at risk of a s114 Notice (Local Government Act 1988) in setting the budget for 2023/24 as set out in the Revenue Budget, Council Tax, Medium Term Financial Plan, and Capital Strategy 2023/24 report to this Council. This view was based on the latest available information and in the event of a change in the risk profile or financial circumstances, the position could not be assured over the medium term and would be kept under review in the coming months. Council was asked to note the requirement for early consideration of budget proposals for 2024/25 and for these to be available for acceleration if required.

The Council was advised to pursue a policy of strengthening its financial resilience by maximising its local revenues; seeking to replenish reserves and delivery of savings in a timely way. In this way the Council would be better able to withstand any future financial shocks and be in a stronger position to develop and implement its strategic plans.

The Chair requested members to note the report.

**ORDERED** as follows:

That the report be noted and that members have regard to it when setting the Revenue Budget 2023/24.

That members note the following:

- An unrelenting focus on delivery of 2023/24 savings and demand mitigation would be required to maintain a balanced budget; further work could be needed to accelerate future budget proposals, if necessary.
- The Chief Finance Officer advice would be to adopt a medium-term strategy that sought to maximise resources and replenish reserves.
- The requirement for a future programme of work to embed an organisational culture of good governance and financial management and within this a particular focus on strengthening financial practice in children's services.

22/88

#### **REVENUE BUDGET, COUNCIL TAX, MEDIUM TERM FINANCIAL PLAN AND CAPITAL STRATEGY 2023/24**

The Elected Mayor of Middlesbrough and the Director of Finance submitted a report, the purpose of which was to present the recommended Revenue Budget of £126,353,562, Council Tax increase of 3.99% (paragraphs 86 to 106), and Capital Strategy Report for 2023/24 (paragraphs 162 to 172).

Following on from the previous report presented to Council on 30 November 2022, the report also provided a refreshed Medium Term Financial Plan (MTFP) for the period 2023/24 to 2025/26 to reflect the 2023/24 Local Government Finance Settlement (paragraphs 107 to 155).

The Medium-Term Financial Plan update in this report is integrated with the £231m Investment Strategy for Middlesbrough for the period from 2022/23 to 2025/26, supported by £114m of the Council's own resources. The updated Investment Strategy was included at Appendix 7 to the report.

The budget continued to support the Mayor's commitment to invest in Middlesbrough and transform service delivery for residents. It was intended that through this strategy the Council could achieve the challenging financial targets faced in the Medium-Term Financial Plan period, whilst ensuring that there was as minimum impact as possible on the level of service delivered to the public.

The Mayor presented the report.

The Chair invited members to comment on the report.

Following a discussion on the content of the report, the Chair invited the Monitoring Officer to conduct a recorded vote.

Prior to the vote, the Monitoring Officer reminded Members that in accordance with Section 106 of the Local Government Finance Act 1992, any member that was more than 2 months in arrears with their Council Tax account, must declare an interest and must not take part in the vote.

The Monitoring Officer noted that no declarations of interest had been made.

The result of the recorded vote was as follows:

Votes For: (20)

Mr A Preston (Elected Mayor) Councillors Bell, Cooper, Coupe, Davison, Grainge, Hill, C Hobson, J Hobson, Jones, Mason, Mawston, McCabe, McIntyre, McTigue, Polano, Sands, Saunders, Smiles, S Walker



Votes Against: (0)

Abstentions: (18) Councillors Blades, Branson, Cooke, Dean, Furness, Hellaoui, Hubbard, Hussain, Nugent, Rathmell, Rooney, Rostron, M Storey, P Storey, Thompson, J A Walker, Wilson, Wright

Following the vote, it was **ORDERED** as follows:

That Council:

- approves the proposed budget strategy for 2023/24 as set out in paragraphs 13 to 85.
- approves the proposed budget savings (Appendices 1 and 2), and other proposals for the 2023/24 budget.
- having taken into account the matters set out in Section 32 of the Local Government Finance Act 1992 and the items set out within the report, that the Council approves the budget requirement for 2023/24 to be set at £126,353,562 as detailed in Appendix 3.
- approves the actual amount of Council Tax (Band D) for areas without parish precepts (excluding Fire and Police) be set at £1,881.86. This represents a total increase of 3.99%. This comprises of a 1.99% increase in general Council Tax, and an additional precept of 2% for Adult Social Care which has been continued by the Government to contribute towards the shortfall of funding for adult social care.
- approves the actual amount of Council Tax (Band D) for areas with parish precepts (excluding Fire and Police) be set at: -
 

Nunthorpe Parish	£1,891.57
Stainton and Thornton Parish	£1,891.17
- approves the amounts of Council Tax for each category of dwelling be set in accordance with table 4 of Appendix 5 within the report.
- approves the Flexible Use of Capital Receipts Strategy 2023/24 amounting to an estimated £3m in 2023/24, detailed in Appendix 6, and that following approval of the Strategy by Council, this will be implemented for 2023/24.
- notes the refreshed Medium Term Financial Plan position for 2023/24 to 2025/26 set out in this report in paragraphs 107 to 155.
- approves the updated Investment Strategy for the period to 2025/26 as outlined in paragraphs 156 to 161 and detailed in Appendix 7.
- approves the Capital Strategy Report (Prudential indicators, Investment Strategy and Minimum Revenue Provision) 2023/24 as outlined in paragraphs 162 to 172 and detailed in Appendix 8 and approves the Authorised Limit for external borrowing of £328m for the Council for 2023/24 as set out in paragraph 172.

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**Executive Member Reports  
and additional Executive  
decision information**

**Council Meeting: 29 March 2023**

**DEMOCRATIC SERVICES**

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## INTRODUCTION

This document contains Executive Member reports relevant to the Council meeting to be held on **29 March 2023**.

The booklet, in addition to containing details of Executive Member activities covering the period following the last Council meeting (section 1), also details those Executive decisions taken since the last booklet was published (section 2) together with those decisions planned to be taken from dispatch of this booklet up until the date of the Council meeting (section 3) and those decisions planned to be taken following the Council meeting (section 4).

The table at section 2 contains details of decisions taken by individual Executive Members, the full Executive, Executive Sub-Committees and Joint Archives Committee. The public reports that were considered are also available through the Modern Gov system.

The tables at section 3 and 4 contain details of the decisions to be taken by individual Executive Members, the full Executive, Executive Sub-Committees and Joint Archives Committee. Further details on key decisions that are to be taken can also be found on the Modern Gov Forward Plan.

The Executive Member reports and the additional decision-making information will hopefully assist Members when considering any questions they may have for Executive Members at Council, which can be asked within accordance of the Council's procedure rules.

Details of those decisions to be taken, as outlined in Section 3 and 4, may sometimes be subject to change (e.g., dates of meetings may alter). Members are therefore advised to check with the Democratic Services should they have an interest in specific issues.

Charlotte Benjamin  
**Director of Legal and Governance Services**  
(01642) 729024

### Contact details

Bernie Carr – Democratic and Registration Manager - (01642) 729714

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## EXECUTIVE MEMBER REPORTS AND ADDITIONAL INFORMATION

### COUNCIL MEETING: 29 MARCH 2023

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#### SECTION 1 - Executive Member Reports

<ul style="list-style-type: none"> <li>Deputy Mayor and Executive Member for Children's Services <i>Councillor M Smiles</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Adult Social Care, Public Health, Public Protection and Digital Inclusion <i>Councillor D Coupe</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Culture and Communities <i>Councillor S Hill</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Environment <i>Councillor B Cooper</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Finance and Governance <i>Councillor S Walker</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Neighbourhood Safety <i>Councillor T Grainge</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Regeneration <i>Councillor E Polano</i></li> </ul>
<ul style="list-style-type: none"> <li>Executive Member for Young Adults and Democratic Engagement <i>Councillor L Mason</i></li> </ul>

**SECTION 2** – Table of Executive decisions taken and that have been through the Call-In period, since the last booklet, published on 10 January 2023.

**SECTION 3** – Table of Executive decisions planned to be taken from dispatch of this booklet up until the date of the Council meeting.

**SECTION 4** – Table of Executive decisions planned to be taken following the Council meeting.

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## **EXECUTIVE MEMBER REPORT TO COUNCIL**

**EXECUTIVE MEMBER:** Deputy Mayor & Lead Member for Children's Services

**DATE OF MEETING:** 29 March 2023

This report aims to provide an update to members on activity within my portfolio and performance against the strategic priorities I either lead on or am involved with.

**STRATEGIC PRIORITY:** Consolidate and build on recent children's services progress to improve Ofsted rating.

### **WHAT I HAVE BEEN INVOLVED IN:**

At the time of publication, Ofsted are with us for their full inspection – the ILACS.

The outcome of this will be hugely significant for our authority as it follows the last full inspection, which took place in 2019, which deemed our children's services department inadequate in every area.

Although there is clearly further work to go to improve, we do believe that we've come a very long way and I want to put on record my thanks to all members of staff, councillors and our partners who have played their part in this work.

As well as staff I have been interviewed by the lead inspector and we hope to get informal feedback soon. As soon as the full result can be shared we will make certain to let members know.

**STRATEGIC PRIORITY:** Consolidate and build on recent children's services progress to improve Ofsted rating.

### **WHAT I HAVE BEEN INVOLVED IN:**

It was an honour to be asked to speak and present awards at our event at the Town Hall to celebrate our amazing foster carers.

There were some inspirational stories that spoke of the loving homes our foster carers provide and how the children they care for are thriving.

We gave a Lifetime Achievement Award to a couple who have been foster carers for Middlesbrough Council for 29 years.

They have had a large number of children in their care, they have moved children onto adoption, back to parents/family and onto long term fostering.

They remain in contact with some children they have cared for and adopted two sisters who are now in their 20s.

We also gave a Foster Carer of the Year Award to a couple who have shown great resilience and commitment during the last few years. They have overcome personal difficulties while remaining focussed on providing excellent care to children.

They even put their own family Christmas on hold to take an emergency placement for three Children just prior to Christmas.

I want to put on record our heartfelt thanks to all of them.

As well as improving the support available to our foster carers, we have responded to their calls for improved pay which has been necessary due to the cost of living crisis.

We believe the improved offer will also stop our much-appreciated foster carers leaving to join an independent fostering agency, which can cost us as a local authority double.

At present there are insufficient numbers of foster placements available either internally or externally to meet our needs and overall. Our ambition is to grow our in-house fostering service in line with our sufficiency ambition to have more children and young people placed in foster care and with a Middlesbrough Council foster carer.

The initial response to these changes have been positive and I look forward to updating you on how it's impacted the service.

**DIRECTORATE PRIORITY:** Deliver the Learning and Education Strategy to help school improvement and support educational outcomes in Middlesbrough.

#### **WHAT I HAVE BEEN INVOLVED IN:**

Tuneful youngsters at a Middlesbrough secondary school have told us about their experiences learning a classical instrument thanks to a programme we support.

Year 7 pupils at Outwood Riverside have been busy practicing the trumpet or clarinet on the Andrew Lloyd-Webber backed Music in Secondary Schools Trust (MiSST) programme.

MiSST was launched last year at the town centre school, allowing 200 children at Outwood to join more than 440 pupils at the King's Academy in Coulby Newham who were already part of the project.

I recently caught up with some of the children taking part at Outwood Riverside.

Ismail, 11, is learning to play the clarinet at Outwood.

He said "I think it's been really fun. It was hard at first, but I like to practice. "I think without MiSST I wouldn't have even known that the clarinet existed."

Lola, also aged 11, agreed: "I play the clarinet and I already liked playing the piano. "It is really fun and it isn't that hard. Piano was already good because I practiced at home, but now I love the clarinet as well."

It's been fantastic to see so many young people learning a new instrument and wonderful to hear from them about their passion for music.

Without the MiSST programme, then nine out of ten young people in Middlesbrough would not be able to access music lessons like this and I'm determined to roll it out further. I'd love to see all Middlesbrough children get the chance to learn a musical instrument.

Middlesbrough Council made funding available to bring the project to schools in the town with support from MiSST, the schools themselves and Tees Valley Music.

**DIRECTORATE PRIORITY:** Deliver the Learning and Education Strategy to help school improvement and support educational outcomes in Middlesbrough.

#### **WHAT I HAVE BEEN INVOLVED IN:**

One of my favourite parts of my role as deputy mayor is visiting our schools – and I have had the opportunity to visit many recently.

It's great to have the opportunity to speak directly to young people and listen to their hopes and ambitions for our town.

Children at The Avenue Primary School in Nunthorpe and Green Lane Primary Academy in Acklam had brilliant questions to ask and showed excellent understanding.

A big thank you to the headteachers who very kindly took time out of their days to take me around the school and introduce me to teachers and children.

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## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Executive Member for Adult Social Care and Public Health, Public Protection and Digital Inclusion

**DATE OF MEETING:** 29 March 2023

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

#### Strategic Priority: Adult Social Care

##### Assurance / Care Quality Commission Inspection Framework

**Update:** We are pleased to report that our Directorate is making significant progress in developing a Service Improvement Programme that is fully aligned with the forthcoming CQC Assurance Framework. The overall aim of this programme is to enhance the quality and safety of our services and ensure that we meet the needs of all our stakeholders, including our clients, staff, regulators, and other key partners.

The Service Improvement Programme is being developed through a collaborative and inclusive process that involves all relevant stakeholders. We have designed the programme to focus on the following themes which are lifted from the CQC framework: Working with people; Providing Support; Ensuring Safety; Leadership. Each of these areas is expected to contribute to overall quality improvement, and the corresponding measures will help us fulfil the requirements of the Care Quality Commission when we are inspected by them in future.

To ensure that our Service Improvement Programme is aligned with CQC requirements, we are regularly reviewing and updating our policies, processes, and performance indicators. We are also using feedback from our clients, staff, and other stakeholders as inputs to guide our ongoing improvement efforts.

We are confident that our Service Improvement Programme will enable us to provide high-quality, safe, and person-centred services, and we remain committed to continuous improvement and delivering the best possible outcomes for our service users and stakeholders.

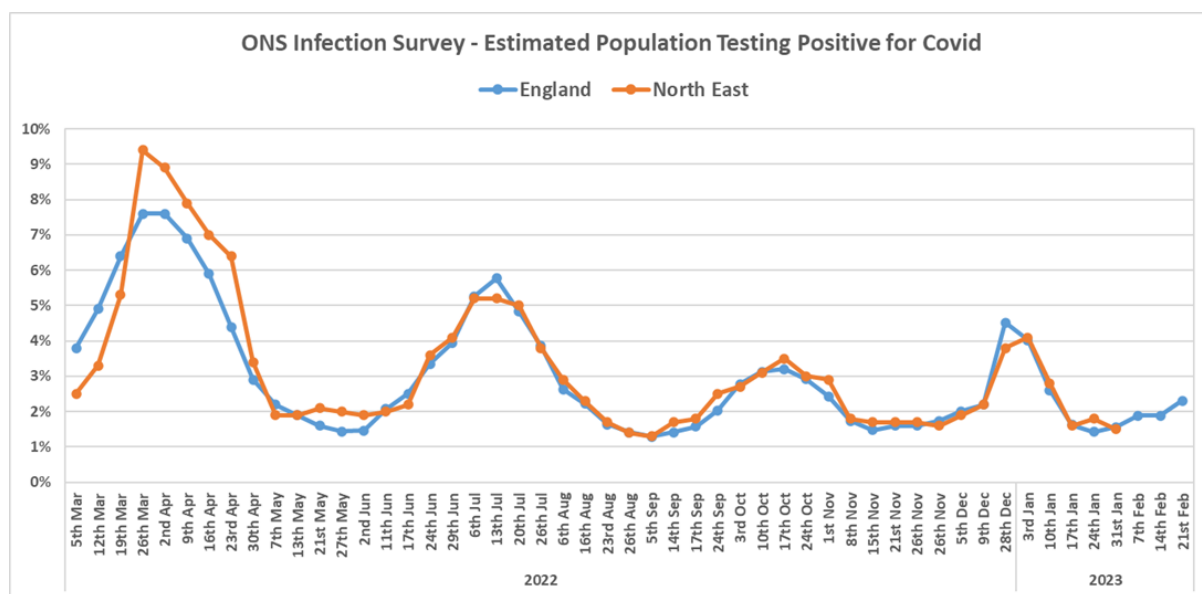
## Accessing Change Together (ACT) Review

**Update:** The Adult Social Care component of ACT includes our housing services and domestic abuse staff teams and resources. We have recently conducted a consultation with staff on some proposed changes to the structure and these have now been implemented. These changes ensure a more effective integration between services in response to domestic abuse; substance misuse and homelessness and provides greater assurance that the Council is able to deliver its duties on adult safeguarding.

### DIRECTORATE PRIORITIES

#### COVID-19 Update

- **Cases** – Latest ONS infection survey (w/e 21<sup>st</sup> Feb) shows an estimated weekly infection rate of 2.3% (1 in 45 people) of population in England. This has seen a slight rise in recent weeks but remains low as shown in the graph below (regional data is now only available monthly). In Middlesbrough there were 49 confirmed cases in previous 7 days to 25<sup>th</sup> Feb or a rate of 35 per 100,000, compared to a rate of 43 per 100,000 in England. Both Middlesbrough and England have seen decreases compared to previous week. Since mid-January 2023, the Omicron variant BA.2.75 and its sub-lineages have comprised the largest proportion of all sequenced infections.
- **Hospital Patients** - Latest data from South Tees Trust (6<sup>th</sup> Mar) shows there are 77 Covid positive patients at South Tees Trust, a decrease compared to 83 previous week. Currently 1 in critical care compared to 3 previous week.
- **Deaths** – There has been 1 Covid death in Middlesbrough for the week ending 17<sup>th</sup> Feb with a total of 4 Covid deaths in the previous 4 weeks.
- **Vaccinations** – The percentage of people aged 50 and over who have received an autumn booster COVID-19 vaccination in Middlesbrough was 61.1%, compared to 67.9% for North East and 64.8% for England. The spring 2023 booster is currently being planned.



## Flu Update

- **Cases** – Influenza surveillance up to week 8 (2<sup>nd</sup> March 23) shows a low positivity rate of 2.4% in England, a figure which has remained low over the previous several weeks compared to the significantly high peak of cases at the end of 2023, which was an earlier peak during the season compared to previous seasons.
- **Vaccinations** – The table below shows flu vaccination uptake rates in Middlesbrough and compared to regional and national rates for the key target groups. Uptake across all groups is lower across Middlesbrough GPs compared to the regional and national rates as of February 2023.

### Flu Monthly GP Collection - February 2022-23

Area	65 plus	65 plus (at-risk only)	Under 65 (all patients)	Under 65 (at-risk only)	Pregnant and NOT IN a clinical risk group	Pregnant and IN a clinical risk group	All Pregnant Women
Middlesbrough GPs	79.2%	82.2%	24.6%	47.5%	31.6%	43.6%	33.3%
Tees Valley CCG	81.3%	84.0%	25.2%	48.3%	31.9%	49.3%	34.1%
Cumbria & North East STP	82.9%	85.3%	28.2%	52.1%	33.4%	49.4%	35.6%
England	81.0%	84.0%	25.2%	50.2%	33.7%	48.4%	35.6%

Source - ImmForm Flu Data Collection

NAME: Councillor David Coupe  
DATE: 21 March 2023

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## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Executive Member for Culture and Communities

**DATE OF MEETING:** Wednesday 29<sup>th</sup> March 2023

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

**Strategic Priority:** *Increase visitor numbers to museums and attractions*

**Update:** Middlesbrough Museums and Teesside Archives

1. The successful *Ancient Egyptians: Secrets of the Afterlife* exhibition at the Dorman Museum closed in February. The exhibition was the first part of a partnership between the Dorman and the British Museum (BM), with the BM lending several objects to the exhibition from its own collection.
2. The partnership also included work with two Tees Valley schools under the *British Museum in Your Classroom* project, which culminated in the schools curating their own exhibition. Reaction to the exhibit was overwhelmingly positive, and the British Museum has intimated their desire to continue the partnership in the future.
3. The project has been put forward to the Museum & Heritage Awards via the Tees Valley Museums Group NPO for 'Partnership of the Year'.
4. The Museum team are now preparing for the reopening of the Captain Cook Birthplace Museum on 1 April, and for The Dorman's next exhibition "Titanic", which will include exhibits of items from the fabrication and ill-fated 1912 voyage of RMS *Titanic*.
5. Middlesbrough Museums is currently undergoing a Service Review which aims to increase engagement with and access to our collections. The 45-day consultation period with staff started on 7 March, and the results will be shared with Members after the review is completed.
6. The 2023/24 budget for Teesside Archives was agreed at the Joint Archives Committee on 1 March. The Committee also agreed to a proposal to develop a brief for feasibility work exploring options for the future development of the service, including the feasibility of bringing archive storage back in-house. Conversations have started with Tees Valley Combined Authority (TVCA) around potential

funding for this work and to better understand how it fits within the wider heritage framework they are developing for the Tees Valley.

## Parks

7. For the Easter holidays, Albert Park has again been awarded funding from the Holiday Activity Fund to deliver holiday programming for children accessing free school meals. Albert Park is working with Breckon Hill, Abingdon and St Joseph's primary schools to signpost children to this opportunity, providing music activities, sport and wildlife education, while also providing a free meal for all children attending. Programmes will take place over four days through the holidays and will be delivered in partnership between Albert Park and the Dorman Museum.
8. Thorntree, Pallister and Albert Parks are nearing completion of their projects funded by the Towns Fund. So far, these projects have seen the delivery of children's play equipment at Pallister Park and Thorntree Park, a lighting scheme at Thorntree Park, a fence around Albert Park's bowls greens and money ring-fenced to contribute to an application to the Football Foundation's 'Playzone' funding for a new multi-use games area at Pallister Park.

**Strategic Priority:** *Increase tickets sales at town hall performances*

### **Update:**

9. The Town Hall has successfully secured a further 3-years of investment from Arts Council, due to its NPO (National Portfolio Organisation) status. The funding will enable the Town Hall to continue to develop its engagement work with diverse audiences and communities.
10. As a pre-requisite to the new NPO funding period (April 2023-March 2026) we have been reviewing our governance arrangements for the Town Hall, including recruiting new Board members and establishing greater community representation.
11. The Town Hall team have been looking at programming for 2024 when the Main Hall will be out of action for circa 8 months whilst emergency roof repair works will take place. The team hope to mitigate some of the lost income by more fully utilising other spaces including the Crypt, Fire Station and Courthouse.

**Strategic Priority:** *Work with the voluntary sector to create and promote volunteering opportunities and an increase in volunteers*

### **Update:**

12. Volunteers in many of our Community Hubs have been doing some amazing work for their local areas including volunteers at North Ormesby Hub, who have recently finished renovating the boxing gym, working hard to extend the sparring ring and add rigging to house more punching bags, which have become necessary due to an increase in demand for the space.

13. Residents of Grove Hill & Easterside have been taking part in Community Hub organised litter picks, being ably assisted by children from Lynx and the Thomas More Mini Vinnies, who collected 30 bags of rubbish in total.

## HIGHLIGHTS

### World Book Day

14. The Middlesbrough Library Service had a full week of World Book Day celebrations reaching over 700 children.
15. Reception classes from Pallister Park Primary School visited the Neptune Library for Little Red Riding Hood themed visits, where they had a story time, went on a Treasure Hunt and explored the library books.
16. Newport Primary School visited Central Library for some Traditional Tales fun and a tour of the Reference Library.
17. St Gerard's Catholic Primary School visited Hemlington Community Hub and Library where they explored Africa using lots of different resources including musical instruments.
18. Acklam Community Hub and Library hosted 40 people at their regular rhyme time session - all the children dressed up and were given World Book Day vouchers to celebrate the occasion.
19. Library staff also popped in to Park End Primary where they carried out whole school assemblies telling the children all about our amazing Middlesbrough libraries - including joining and borrowing books for free, the promotion of reading for pleasure, our popular Lego Clubs, holiday sessions and the Summer Reading



Challenge.



### Shop Window Displays

20. As part of the Town Centre Crime and ASB Action Plan, the culture team have put a call out for creatives to express interest in curating a series of empty shop window displays.

21. The programme will start in June and be preceded by a national photographic exhibition in partnership with Historic England. "Images of England's High Streets"- including photographs of Middlesbrough- will be displayed in shop units from 22 March.

Cllr Stephen Hill

16/03/23

## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Councillor Barrie Cooper

**DATE OF MEETING:** 29 March 2023

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

#### Strategic Priority:

#### *Roads and Highways*

##### **A66**

Works are currently ongoing to replace the damaged VRS (crash barriers) at various locations on both eastbound, westbound and central reservation locations. Works are expected to take a further 8 weeks, taking place during planned overnight lane closures.

Resurfacing works to the westbound carriageway between Newport interchange and the boundary with Stockton Council are scheduled to take place from week commencing 20<sup>th</sup> March. The works will be carried out during planned overnight road closures and are expected to take 10 nights to complete. Works to the eastbound section between Newport interchange and the boundary with Stockton Council are scheduled to take place week commencing 17<sup>th</sup> April and are expected to take 7 nights to complete. Potholes and Footpath maintenance continues across the Town even though our teams are out spotting problems it would be helpful in Councillors not only reported defects themselves but encouraged their residents to do so using My Middlesbrough.

#### *Verges and Footways*

Works for 2022/23 are almost complete and the Works for 2023/24 have been identified and are currently being assessed and measured in order to put a programme together for the coming year.

#### *Carriageway Resurfacing*

We have awarded the second surfacing contract to Tarmac Trading Ltd though NEPO for stage 3 of the resurfacing programme which concentrates on the classified road network. Ward Members are being informed of works within their Wards as the programme progresses. The roads that have been resurfaced are those in the worse condition, which should have an impact on reducing the number of insurance claims, and also have a positive impact on the local areas throughout the town. Tender documents for the Carriageway work of the 2023 – 24 programme are being prepared.

### ***Bridges & Structures***

We have completed all but 4 principal inspections. The remaining inspections are on culverts, and we are working with contractors to remove silt build up in order for the inspections to take place. The reports are been compiled into a programme of works with a full updated schedule to be made available as soon as all the inspections are completed. We are progressing on planned works on A66 Newport/ Cannon Park Interchange, A66 Hartington Interchange, Borough Road Flyover. The contract for the repairs to column 20B have been awarded to a contractor and works schedule is to be confirmed.

### ***Flood Management***

We continue to work proactively on flood risk management through joint working with the EA and NWL. The ongoing use of Gully Smart will ensure the council has a clear picture of the size and condition of the asset, which will improve the long-term planning and maintenance of gullies. We are continuing to develop our knowledge of the network and the second survey of the network is to take place later this year. This will enable a risk-based approach to be taken in respect to gully cleaning.

### ***Laboratory***

Highways Laboratory have completed Coring Programme for the 2023/24 Carriageway works in Middlesbrough. The coring reports will aid the tender documentation sent out to asphalt suppliers/contractors for the upcoming road maintenance programme.

### ***Traffic Signals/UTMC***

The move into the UTMC facility at Fountain Court has gone well and has been occupied since December 2022. We now have CCTV access to Middlesbrough and Stockton areas and we are waiting to establish links to the other partner authorities shortly. We are linking our Mobile cameras up soon to fill in the gaps at junctions where we do not have coverage. We are installing journey time equipment and deliver information onto the VMS (Variable message signs) to enable drivers to access this information and make informed decisions. We use strategies to coordinate signal sites when there are issues on the network through the UTC (Urban Traffic Control) System and we closely monitor and influence the Tess Valley Network from our suite here at Fountain Court.

We are going to host Ben Houchen and Andy Preston after purdah has elapsed to showcase our facilities and offer a presentation to describe what we do.

### ***Parks, Open Spaces and Cemeteries***

The Council has been creating and regenerating Parks across the Borough, I have chosen to mention this one as it shows how well Councillors can work together.

### ***Newham Way new play area, Coulby Newham ward***

Work started week commencing March 13th, when it's completed we will see:

Brand new play area – swings, seesaws, multi-play unit with slide, tunnel and climbing blocks, various character-themed springies, explorer play panels, climbing frames, talking tubes, benches and fencing. New footpath link to MUGA.

Councillors Stefan Walker, Barrie Cooper, Luke Mason and David Branson said:  
“Playgrounds are part of the fabric of a happy childhood, and we owe it to our young people to ensure they have the best possible equipment.



Ward	Project Details	Update / Status
<p>Marton West</p>	<p>Fairy Dell boardwalk - re-build of the wooden boardwalk beside the lake using recycled plastic.</p> <p>Bonnygrove park – footpath, fencing, new play equipment, play park flooring.</p> <p>Marton West Beck – seating / heritage trail</p>	<p>Scheme fully completed:</p>
<p>Ladgate</p>	<p>Upgrade of Easterside (Broughton Avenue) play park and upgrading of the torn / ripped outdoor football pitch.</p>	<p>Scheme underway, expected to be fully completed week commencing 20<sup>th</sup> March.</p>
<p>Coulby Newham</p>	<p>New children's play area at Newham Way</p>	<p>Works have commenced and are expected to be completed by end of March 2023.</p>
<p>Marton East</p>	<p>Create a stretch of footpath on the south side of Cypress Road, Marton, between Hawthorn Crescent and Rosewood Court.</p>	<p>Scheme fully completed:</p>
<p>Brambles Farm / Thorntree</p>	<p>New play area at Colmore Avenue / rear of Millbrook Avenue</p> <p><i>*The play area was originally proposed to be located at Beresford Buildings, Thorntree Shops however residents were opposed to this location.</i></p>	<p>Scheme is yet to commence – currently awaiting Planning Permission decision.</p>

Newport	Improvements at Glebe Road Park	Scheme fully completed.
Borough wide	Refresh of 18 play parks	Works have commenced and are expected to be fully completed by end of March 2023.
District shopping areas	Installation of large planters	Scheme fully completed.
Pallister Park	MUGA improvements	Scheme is yet to commence - the budget has been included in a bid to the Football Foundation's Play Zone Fund as match funding for investment in wider play park improvements across the town – the bid has been successful at the first stage and has now progressed to the next stage involving community engagement.
Albert Park	Fencing of Albert Park bowls and croquet greens	Planning Permission and Listed Buildings Consent have been obtained, currently waiting for steel/materials to be received by the appointed contractor and then the fencing will be installed – the install should take approximately 2 weeks and therefore the scheme will be completed shortly.
Thorntree Park	New LED lighting	Scheme now fully completed
Pallister Park and Thorntree Park	To provide additional children's play equipment across the identified parks	Scheme now fully completed

### ***Environment Sustainability***

As a Council we have agreed a target of 2029 for making the Council Carbon neutral and 2039 for making Middlesbrough Carbon neutral.

This is consistent with the government's long term goal of eradicating domestic UK emissions that contribute to human caused climate change by 2050.

With this in mind together with voluntary groups such as Borough Champs and the Rotary Club we have been planting trees, The Forestry Commission working with Tees Valley Combined Authority have made thousands of trees available for planting in the Tees Valley under the Heading of Trees on Tees, the ambition is to plant one million trees in the Tees Valley and with that in mind I attended a Forum held at Kirkleatham Walled Garden on 9<sup>th</sup> March.

Climate Action Middlesbrough and Middlesbrough Environment City have created a tree nursery and I look forward to being able to help plant those trees when they are old enough to survive on their own.

I have also been looking at Electric Bikes, Electric Motorbikes, Electric cars and vans, Hydrogen powered vehicles however the lack of infrastructure can be a barrier. Enquiries into charging points in carparks and streets via connections within street lights are ongoing an app called ZapMap is available showing all current charging points across the UK.



Flood risks. The £4.8million Marton West Beck Flood Scheme in Middlesbrough is complete. It reduces flood risk to around 500 homes and businesses from the beck, sea and surface water in central Middlesbrough. The project, which was led by the Environment Agency in partnership with Middlesbrough Council, includes upstream storage areas, an extended trash screen at Albert Park, and new and improved flood walls.

I would invite everyone to view the Environment Agency video on

<https://www.youtube.com/watch?v=m05aexQ2-3k>

I have been monitoring the becks and reporting those that seem to be filling up with vegetation and I would ask all Councillors to do the same to protect our residents from the misery that homes being flooded brings.

### ***Refuse & Recycling***

The Waste team have continued to work hard with residents and our recycling contractors to try and reduce contamination – this work has included viewing the sampling process at Cumbrian Waste Management to identify the main issues in the recycling and then using this information to develop our communications and social media campaigns. The team have also carried out resident visits to provide advice on what can and cannot go into the blue lidded recycling bins.

Alongside the above the team have also attended the following events:

- Recycling Roadshow – Middlesbrough Bus Station & Parkway Centre
- Working with Thirteen to encourage recycling in a variety of locations
- Working with crews to identify contamination in blue lidded recycling bins
  
- Green Waste collections are to resume on Tuesday 11 April – the collections will be fortnightly – residents are advised to check the calendars online for their specific collection dates
  
- HWRC reverts to Summer opening hours from 1 April 8am to 7pm – seven days per week
  
- Waste Services undertook a staff training day on Monday 23 January – a variety of topics were covered including:
  - Focus Groups
  - Safety on the Highways
  - Prevent
  - Climate Change

### ***MEC***

Fairtrade fortnight was from 27th February through to 12th March to spotlight the harmful effect of the climate crisis on the future of our food.

This year's campaign was to highlight the message that whatever your budget and wherever you shop, when you choose Fairtrade, you support farmers to take care of the environment through Fairtrade's Price, Premium and Programmes.

Middlesbrough Environment City held two information events in the Green Hub based in Middlesbrough Bus Station speaking to residents about Fairtrade and climate Change, offering free Fairtrade Bananas and Banana Cake made with Fairtrade products to

try. The events were a huge success with residents knowing why they need to purchase Fairtrade products. This will help Middlesbrough keep it's Fairtrade Town Status when it is due for renewal next year.



### **Area Care**

Tees Trees Testimony – Area Care assisted the Rotary Club in the planting of 100 trees along the river tees and received the following feedback

“On behalf of Erimus and our sister rotary clubs please accept and pass on our thanks to your team whose assistance in planting 'Tees Trees' was invaluable. It was a team effort and your guys were great!

The ability to involve twenty environmental science students from Middlesbrough College in the process was a significant bonus.

Particular thanks, apart from your good self and Andy who sparked the lightbulb moment are due to Peter Chapman (our best wishes for his speedy recovery), Geoff Robinson for picking up the pieces so quickly and Darren Appleton and his ever cheery team!

Today we completed planting our current stock and reached our planned destination opposite the Cupral building a short way downriver of Newport Bridge. Now something approaching one and a half miles of riverbank has been planted with native deciduous trees which over time should transform the riverscape of Billingham Reach.

I know that Tees Trees are on your watering routine and we shall make a point of regular visits over the coming months so that if repairs to staking or fastenings are required we can maintain our links with your team”





- The Urban Meadow areas will be prepared for sowing. An additional 10,000m<sup>2</sup> are to be added to this year's programme which will include extensions of some current areas and also some new areas throughout the town.
- Play area refurbishments/replacements are programmed for various sites throughout the town with many sites near to completion.
- The recruitment process for Area Care seasonal staff is now completed, with the successful applicant commencing employment with us on 3rd April.
- We always target to get the first grass cut of the season completed by the end of March. However, the recent wet and cold weather has prevented the start.
- We are in the process of securing funding from Tees Valley Combined Authority to improve the cleanliness of the town centre areas. The funding will enable us to recruit a number of dedicated "Area Care Caretakers" to support our existing staff & specifically to provide a deeper clean to the pedestrianised areas of the town.
- A number of different options/machines have been investigated with regards to Chewing Gum removal, this information has been forwarded to the Town centre management team to secure the finding through the Keep Britain Tidy initiative.
- Walk the ward meetings have commenced and will continue throughout the year. These "walks" are of great benefit in enabling the ward councillor to meet with our management team to identify/address arising issues.
- Area Care will commence with a new initiative called 'Added Value' this is to utilise the current cleansing staff throughout the town to carry out various works which should improve the aesthetics of the town

### **Green Strategy**

- The latest community garden was unveiled at Trinity Church North Ormesby with the Mayor and Cllr Cooper in February.
- The Tees Valley Wildlife Trust have been working in Coulby Newham tidying up a derelict orchard and pond at Lingfield as well holding tree planting events as part of the Climate Action Middlesbrough programme.
- We are nearing the completion of Middlemarsh nature reserve project with the installation of a new sculpture and seating on the site to promote public access.
- Submitting a bid for government funding for on street electric car charging stations in the town where residents don't have drives or garages to charge EV's.

### **Catering Team**

The decision to increase paid school meals was agreed as part of the recent budget proposals, the price increase will take place from 17th April 2023 (after Easter half term).

Current Meal Price:

Primary (including Nursery) Meal £2.15

Secondary Meal £2.25

Meal Price from 17th April 2023:

Primary (including Nursery) Meal £2.40

Secondary Meal £2.50

<b>THE TIME AHEAD</b>
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*Any Councillor who wishes to have a Ward Walkabout with myself or MBC Environment Officers simply needs to ask via email.*

NAME Councillor Barrie Cooper

DATE 16th March 2023.

## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Stefan Walker

**DATE OF MEETING:** 29 March 2023

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

**Strategic Priority:** *We will ensure the recovery of local communities, businesses, and the Council's operations from COVID-19, taking opportunities to build back better.*

#### **Update:**

- 1.1. Since our last ordinary meeting held on 18<sup>th</sup> January 2023 there have been various large developments within my portfolio.
- 1.2. The process of budget consultation finished and in the same period, through dedicated officer work, the council has produced a children services financial improvement plan. The outcome during this period was a revised budget with movements and outright removal of key items on appendix 1 and appendix 2 savings whilst also achieving a 3.99% council tax increase which produces a balanced budget.
- 1.3. From this work, it is clear, as I have referred to explicitly in almost each of my executive reports, that Middlesbrough Council must proactively focus on having a manageable and sustainable cost management strategy which ensures more efficient delivery of this service.
- 1.4. It was in this context that the council commissioned CIFPA to perform analysis work on our overall budget but with a specific focus on this service. The outcome of this work had added value to understanding what our current position is and what our potential financial future may look like.
- 1.5. Whilst this administration has put aside specific reserves for social care via the social care transformation reserve fund and has shored up general reserve balances we remain, particularly as an authority with such high levels of relative social deprivation, high risk in terms of our financial exposure.
- 1.6. It is therefore imperative that the work done thus far within the score of the financial improvement plan continues and expands to incorporate a joint effort

from members, officers, and whole council functions to ensure long-term sustainability.

- 1.7. On the 27<sup>th</sup> February 2023 the council held its annual budget meeting in which council passed the proposed budget as mentioned in paragraph 1.2.
- 1.8. In the same meeting the council also passed its updated pay policy statement and local council tax support scheme for the year 2023/24.
- 1.9. The council tax support scheme changes were designed to uplift our bandings (which are up to 90% funded) to ensure that those residents who have had an uplift in benefit entitlement are not then penalised by a loss of reduction entitlement of council tax support.
- 1.10. The council has access to a further £3.3million of funding from The Household Support Fund of which an action plan of deliverance is coming together to provide relief to residents linking help to the cost-of-living crisis. Officers have already delivered similar outputs from the same fund for the year 2022/23 and have performed exceptionally in delivering this support to residents who have been eligible.
- 1.11. On the 14<sup>th</sup> February I attended an executive meeting in which the quarter 3 outturn position was noted, the local council tax support for 2023/24 was voted on and the Tender Pipeline 2023/24 and Corporate Procurement Strategy 2023-26 was also voted on.
- 1.12. In the past financial year, the council has had consistent forecasted overall overspend positions contained within the outturn reports produced. This has been a multifaceted problem informed by partially global events such as the war in Ukraine which ultimately has seen inflation increase substantially and has in turn resulted in trends such as increased interest rates, cost of living crisis and enhanced pay awards.
- 1.13. The council responded to this by passing an in year financial recovery plan on the 18<sup>th</sup> October 2022 and this plan has reduced the potential overspend by £6.8million as of February 2023. The cross-directorate work by officers to achieve this has been invaluable.
- 1.14. Nevertheless, there still remains a forecasted overspend for the year of £3.4million. It is anticipated that this overspend will then be met by utilisation of the social care transformation reserve.
- 1.15. This reserve, which started at approximately £9million will then only have around £1.7million remaining at the end of this financial year. Despite this however, the general reserve fund balance is anticipated to increase again, for this year by around £1million.
- 1.16. However, it is acknowledged both from the CIPFA report and from the section 25 report of Middlesbrough Council's Section 151 officer which was published on our budget meeting that the reserves of Middlesbrough Council are relatively low and that this increases our risk for financial resilience.

1.17. As a consequence of the budget meeting, Middlesbrough Council has dedicated record funding to social care and to Children Services in particular. However, given the precarious financial context of the Council, it is imperative that we deliver and build on the objectives of the Children Services Financial Improvement Plan which was passed by Executive on the 14<sup>th</sup> February 2023.

**DIRECTORATE PRIORITIES**

**Directorate Priority:** *Set out the directorate priority*

**Update:** *Any additional risk/progress/best practice/high profile change*

*Repeat as necessary for each priority you wish to update on*

**HIGHLIGHTS**

**THE TIME AHEAD**

*Upcoming issues/things on the FWP/projects involved in*

NAME

DATE

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## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Neighbourhood Safety

**DATE OF MEETING:** 29 March 2023

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

**Strategic Priority:** *Reward and champion individuals for being good neighbours*

**Update:** *We had a worthy winner Harry Lane last month from Easterside. Harry takes the bins out for nearly every house on Albourne Green and returns them. He lets the rest of Easterside know on Facebook when the bins need taking out and also leads a weekly walking group.*

*One of the objectives of the good neighbour award is to celebrate good news stories across Middlesbrough, to increase the feel good factor in the town, to thank good neighbours and encourage people to help others*

*Harry made the local and national news with stories in The Sun, Gazette, Radio 5 Live, ITV news, BBC online and other places.*

*The winners so far have set the bar extra ordinarily high, but please don't let that stop you nominating residents in your ward.*

*If you know residents who are helping their neighbours and your community, please nominate them. You can find them if you Google 'Middlesbrough Council Good Neighbour award'*

**Strategic Priority:** *Encourage Residents to Support Crime and anti-social Behaviour*

**Update:** *For Middlesbrough to be safer we need residents to work with police and the council*

*A common complaint from residents is 'Why aren't the police seizing more motorbikes?' Police will not chase a motorbike for fear of causing a crash and endangering lives. What they will do is visit houses where bikes/quads are stored and seize all illegal ones. For this they need the public's cooperation. Encourage the public to contact the council, the Cleveland Police or the Cleveland Online Policing app or anonymously on Crimestoppers*

*The same with drug dealing and nuisance neighbours. Encourage neighbours to record all anti-social behaviour and crime.*

*Local Police Community Support Officers and Council Neighbourhood Safety Officers are also good people to report all crime and anti-social behaviour too*

## HIGHLIGHTS

*I've included examples of how the public working together with the authorities has helped produce results*

- Get Connected – Day 1: Developing a strategic approach.



Following reports from members of the public the following issues were dealt with:

Abandoned Vehicle removed due to the condition of the vehicle.



Waste issues in the Hemlington Area, cleared by the flying squad.



Fly tipping in the Marton Manor area currently under investigation.





Middlesbrough Neighbourhood Policing Team

10 h · 🌐

Whilst out on patrol earlier this week, officers from [Middlesbrough Neighbourhood Policing Team](#) seized two motorbikes seized from Pallister Park, which are believed to have been stolen and involved in crime.

Enquiries are ongoing.



## THE TIME AHEAD

### *Neighbourhood Watch*

*Through Adam Parkinson we have had some good conversations with national Neighbourhood Watch and have been impressed with their latest pamphlets, promotional materials and coordinator packs. We want to help resource local Neighbourhood Watches better. If you would like more information for an existing Neighbourhood watch or starting a new one, please contact myself or Adam Parkinson*

NAME: Tony Grainge

DATE: Friday 17<sup>th</sup> March

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## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Eric Polano

**DATE OF MEETING:** 29 March 2022

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

**Strategic Priority:** *Consider Potential for Boho Digital Expansion (Boho X)*

**Update:** The works undertaken by Northern Power Grid that have delayed the completion of Boho X have now been concluded. As the power supply to the building is now in place, the final fitting and testing of the internal systems is underway, as is the final stages of the internal and external works required to hand the building over to the future tenant. The building is scheduled for practical completion on May 16<sup>th</sup>, upon which the tenant will commence their own internal fit out.

**Strategic Priority:** *Open Three Entertainment Facilities Within Captain Cook Square*

**Update:** The long awaited opening of anchor tenant Level X went ahead recently. The new operation provides 70,000 sq ft of entertainment space including Virtual Golf, Karting, VR, Bowling, Arcade, Pool, darts, gaming, bar and restaurant. The opening on 23<sup>rd</sup> February marks the start of the area's transformation into a magnet for visitors of all ages.

**Strategic Priority:** *Protect and Celebrate Heritage Through Marketing and Comms Strategies And Complete Planned Work To The Captain Cook Pub*

**Update:** Following a successful restoration of the historic fabric of the listed building, the Captain Cook Pub is now ready to enter the market to seek expressions of interest for a freehold sale. The historic building has been on the market since 27<sup>th</sup> February and information is available on the Council website. Interested parties will be assessed on the offer price and an appreciation of how the proposed use would be of benefit to the wider aspirations of the Boho Zone, and develop a new residential community at Middlehaven. Potential uses could include, office space, bar / bistro, serviced accommodation or cultural facility. Following a period of analysis of offers, the Executive will be engaged to decide on their preferred disposal option.

## DIRECTORATE PRIORITIES

**Directorate Priority:** *Commence Programme of Investment in Middlesbrough Rail Station and the Area Around It*

**Update:** Planning permission has been granted for the development of a new leisure venue under the A66, on the site of the former Slam Nightclub. The Stack venue will open in Spring/Summer upon the completion of maintenance work to the columns supporting the A66. Stack operate a number of venues around the country using shipping containers to provide a variety of street food, music and entertainment. Proposals to integrate the development into the newly improved public realm at Exchange Square have been agreed with Historic England.

**Directorate Priority:** *Deliver Middlesbrough's Towns Fund Programme (Centre Square 6)*

**Update:** The third of the new state-of-the-art office facilities has reached practical completion in preparation for its new tenants. Centre Square 6, on the former Melrose House site, adds over 40,000 sq ft of Grade A office accommodation to Middlesbrough's professional services market. Already having the benefit of a lease from insurance giant Axa, the site will host up to 400 jobs in central Middlesbrough – supporting businesses and securing jobs for local residents. The £12m facility has been funded by Tees Valley Combined Authority with a critical £2m intervention from Middlesbrough's Towns Fund / Town Investment Plan. A short period for fit out will be followed by Axa's occupation in summer 2023.

**Directorate Priority:** *Deliver Middlesbrough's Future High Street Fund Programme (Church House)*

**Update:** Funding agreements have now been signed for the redevelopment of Church House and Albert Road properties for residential uses. As part of Middlesbrough's Future High Streets Fund (FHSF) Programme. The project will transform a key property which dominates Middlesbrough's skyline and provide new and appealing accommodation for more people to live and work in central Middlesbrough. The £11m plus investment will create around 100 new apartments and be a welcome addition to the stylish Baker and Bedford Street area and a revitalised Albert Road. Final preparations are being made over the next few months with a construction programme targeting a 12 months conversion from summer 2023 to summer 2024.

## HIGHLIGHTS

**Treasury Round Table Discussion:** The Economic Growth Service hosted a round table discussion with Treasury colleagues on 10<sup>th</sup> February. This event marked the start of an increasingly close and inclusive relationship with Whitehall Departments and the Treasury Campus at Darlington. The event was an opportunity for the Treasury to engage with the Local Authority and key business leaders from Middlesbrough's retail, hospitality, leisure and associated supply chains. Businesses and Council Officers outlined the key challenges facing the sector and considered a number of factors which would better support the business ecosystem. Treasury colleagues will take this detailed information and feed it into the processes to develop future policies and interventions.

Additional target sectors, and their specific challenges, will be considered in future sessions.

### **Rio Cantina**

In another vote of confidence for Middlesbrough's Café Culture, Rio Brazilian Steakhouse, on Albert Road, is seeking permission to extend its premises licence to include the vacant (former Permanent House) unit next door. The owners plan to open up a new coffee shop called Rio Cantina that will serve drinks, breakfasts and lunches. If Licensing approval is secured, work should start in May on the expansion with the new venue opening in mid-July.

<b>THE TIME AHEAD</b>
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**Changing Places Toilets:** Funding has been secured and designs finalised for a Changing Places Toilet facility to be installed in the Cleveland Centre. This follows successful installations in Albert Park and North Ormesby Resource Centre. Having additional and accessible facilities in the Town Centre are a key consideration for visitors and this will ensure that there is a clean and inclusive facility, for all. The final design will seek approval in Q1 of 23/24 and will be delivered over summer 2023.

Eric Polano  
March 2023

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## EXECUTIVE MEMBER REPORT TO COUNCIL

**EXECUTIVE MEMBER:** Councillor Luke Mason

**DATE OF MEETING:** 29 March 2023

The purpose of this report is to provide an update to members on areas of activity within my portfolio including performance against strategic priorities.

### STRATEGIC PRIORITIES

**Strategic Priority 1:** To critically engage with young people across Middlesbrough to ensure their thoughts, ideas and opinions are heard and help inspire them to take action in their local communities.

**Update:** I have continued to visit students from various wards across Middlesbrough and spoken about a wide variety of topics, from the importance of political participation in elections through to their ambitions for the future. It is crucial that we as a local authority do all that we can to help facilitate these discussions in local schools and colleges.

Some recent visits include:

- Abingdon Primary School
- Berwick Hills Primary School
- Captain Cook Primary School
- Pallister Park Primary School
- Acklam Whin Primary School
- Acklam Grange Secondary School



It was particularly positive to see that many of our schools are establishing School Councils and developing leadership roles to give children the opportunity to participate in serious discussions around the governance of their respective school.

On the whole, young people are generally satisfied with their local areas across much of the town and are happy to live in Middlesbrough. One common area of concern was anti-social behaviour at play parks and this is something which we should look to monitor moving forward.

Our MYP's continue to champion our area on a national level and are actively involved in a range of activities such as hosting youth debates and helping to promote key topics which matter to them.

## DIRECTORATE PRIORITIES

**Directorate Priority 1:** To ensure that people in Middlesbrough have access to the training and learning they need to enter the world of work and help reduce overall unemployment in Middlesbrough.

**Update:** We will be relaunching our employment hub at the MME (Middlesbrough Media Exchange) towards the back end of March 2023. The Employment Hub is funded by the DWP and managed by Middlesbrough Council. The hub, which is based on Corporation Road, will support those aged 16+ with short interventions to move them closer to employment. This will include increasing employability skills and confidence, progressing them to training and education as well as work experience and volunteering.

There will be a DWP work coach on site two days a week to focus on those aged 16-24 years old. We will also have support from the National Careers service and a range of other providers and additional services from around Middlesbrough to offer further support. The overall aim here is to create a 'one-stop shop' to reduce unemployment levels in Middlesbrough by offering information, advice and guidance through short interventions and signposting.

This represents further support which we are offering our younger people in addition to the work currently being carried out at the MME and also the Lingfield Countryside Centre in Coulby Newham.



**Directorate Priority 2:** To increase Youth Participation with the Council across a range of different areas.

**Update:** We continue to look to increase the number of opportunities which young people have to engage with the Council. As well as hosting a number of 'one off'

events throughout the year we also have a number of ongoing events which offer a chance for engagement such as:

- Children in Care Council: This is a fortnightly group for young people to tell us what is important to them and have their views heard. So far 60 care experienced young people have engaged. The group frequently host events ranging from brunch and picnics to seasonal parties. Corporate parents and senior managers attend events regularly and areas which are looked at are decided by the young people involved.
- Older Care Experienced Young People: This has involved 16 care experienced young people redesigning/ rewriting their offer. The participation team will be meeting young people in residential homes to capture their views and meeting care leavers when they are free. A new offer for care leavers is due to be produced in June 2023.
- Youth Council: 8 young people currently attend the Youth Council and they are producing a manifesto with the main topics centring on the Cost of living crisis and mental health. Moving forward these young people will be working with key decision makers to make a difference in their communities and address the main points outlined in their manifesto.
- SEND young people Group: A number of young people attend a fortnightly group to develop/ design their own conference and have a voice on other matters that are important to them. The Youth Voice Conference 2023 will consist of a number of workshops which will be led by young people based on issues which are most important to them.

If members would like further information on the journey participation has undertaken in Middlesbrough or would like a calendar of upcoming events please email me in the first instance.

## **HIGHLIGHTS**

As ever, listening and speaking to our young people across the town remains a key highlight. It's brilliant to see that the authority is continuing to expand provision to enable people to succeed in education and gain the necessary skills to achieve their ambitions in the wider world. MBC staff continue to go above and beyond in helping support our young people and this passion is clearly having a hugely positive effect.

## **THE TIME AHEAD**

I will undertake several further visits to local schools and academies before Purdah (Pre-Election Period) comes into effect and continue to liaise with our participation team to assess the relative success and participation levels of our groups. Work continues to encourage local businesses and contractors to offer apprenticeships to our young people in an effort to increase the number of job opportunities. Regardless of the outcome of the upcoming election it's crucial that the voices of young people continue to be heard and opportunities to help shape policy and engage with decision makers is continued.

NAME Luke Mason  
DATE 29/03/23

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## EXECUTIVE MEMBER REPORTS AND ADDITIONAL INFORMATION

### SECTION 2 – DECISIONS TAKEN

DATE	DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
24 Jan 2023	Executive	Children's Services Improvement Programme: Update Report	To brief members of the Executive on the progress made against the Children's Service Improvement Plan with particular reference to the findings of Middlesbrough's Ofsted Monitoring Visit in November 2022.	No
24 Jan 2023	Executive	In-House Fostering – Part A and Part B	To provide information to Executive in order to support the request for an agreement to invest in the in-house fostering service.	Yes
24 Jan 2023	Executive	Middlesbrough Development Company	To consider the next steps for the Council's Housing Delivery Vehicle in light of recent guidance.	Yes
24 Jan 2023	Executive	Re-procurement of a Bereavement and Suicide Postvention Support Service (South Tees)	To seek approval for Middlesbrough Council to undertake re-procurement for a Bereavement and Suicide Postvention Support Service with a view to commence 1st April 2023 for a period of 3 years with an option to extend dependant on funding.	Yes
24 Jan 2023	Executive	Teesside Ability Support Centre (TASC) Day Service Contract – Futures Commissioning Part A and Part B	The proposed contract from April 2023 requires a Key Decision due to the financial commitment required	Yes

DATE	DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
24 Jan 2023	Executive	2022-2024 Community Safety Plan	This report proposes that we extend the current community safety plan until 31st March 2024 to allow senior leaders time to review the priorities and produce a meaningful set of collective strategic objectives for the next 3 years.	Yes
24 Jan 2023	Executive	Site L (North) Coulby Newham – Disposal Part A and Part B	The purpose of the report is to seek Executive approval to dispose of the Council's freehold interest in Site L (North) Coulby Newham	Yes
24 Jan 2023	Executive	Town Centre Property Purchase Part A and Part B	The purpose of the report is to seek Executive approval for Middlesbrough Council to acquire the freehold interest in a major town centre building of strategic significance	Yes
24 Jan 2023	Executive	Final Report of the Adult Social Care and Services Scrutiny Panel - The Role of the VCS in Supporting Adult Social Care - Service Response	To consider the Scrutiny Panel's Final report and approve the Executive Action Plan developed by the Service area	No
14 Feb 2023	Executive	Corporate Performance Report: Quarter Three 2022/23	To review the corporate performance of Q3	Yes
14 Feb 2023	Executive	Revenue and Capital Budget – Projected Outturn position as at Quarter Three 2022/23	This report advises the Executive of the Council's financial position as at Quarter Three 2022/23.	Yes
14 Feb 2023	Executive	Local Council Tax Support 2023/2024	To seek approval of the Council Tax Support (CTS) scheme for 2023/24.	Yes
14 Feb 2023	Executive	Children's Services Financial Improvement Plan	To approve the Children's Services Financial Improvement Plan, and in order to progress delivery of the plan to approve: <ul style="list-style-type: none"> <li>To commission a single managed project team, linked to saving 2 on the plan</li> <li>To develop an in-house family support team.</li> </ul>	Yes
14 Feb 2023	Executive	Budget 2023-2024 – Statutory report of the	The purpose of the report is to enable members to fulfil their	No

DATE	DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
		Chief Finance Officer	responsibility to set a balanced budget for 2023/24.	
14 Feb 2023	Executive	Revenue Budget, Council Tax, Medium Term Financial Plan, and Capital Strategy 2023/24	The purpose of the report is to enable members to fulfil their responsibility to set a balanced budget for 2023/24.	Yes
14 Feb 2023	Executive	Tender Pipeline 2023/24	Report to present Middlesbrough Council's tender pipeline for 2023/24 in order to seek Executive agreement for the tender publication and award if appropriate.	Yes
9 Feb 2023	Executive Member for Regeneration	Transport and Infrastructure 2023/24 Capital Programme	To gain approval to develop and deliver the proposed projects associated with the Local Transport Plan allocation.	Yes
14 Feb 2023	Executive	FEBRUARY Report Manager Test	Test Workflow	Yes
14 Feb 2023	Executive	Tees Valley Waste Report	To seek approval for MBC to enter with seven other councils a Special Purpose Vehicle company in order to manage the Tees Valley energy recovery facility that will be responsible for the disposal of Middlesbrough municipal waste.	Yes
14 Feb 2023	Executive	Adult Social Care: Respite Charging	Review of the charging policy for respite care services	Yes
14 Feb 2023	Executive	Special and Educational Needs and Disabilities	Request to have a Local Government Association SEND Peer Review	No
14 Feb 2023	Executive	Asset Disposal Business Case for Special Free School for Neurodiverse children	Business Case to be presented to seek decision on proposal to lease land on Stainsby Road to the Department for Education to build a Special Free School	No
14 Feb 2023	Executive	Tender Pipeline 2023/24	Report to present Middlesbrough Council's tender pipeline for 2023/24	Yes

DATE	DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
			in order to seek Executive agreement for the tender publication and award if appropriate.	
14 Feb 2023	Executive	Expansion of the Digital Sector - Boho 11	To seek approval for the capital funding to progress with the expansion of the digital sector in Middlesbrough through the development and delivery of Boho 11	No
14 Feb 2023	Executive	Transport and Infrastructure Capital Programme 2023/24	The purpose of this report is to gain approval to allocate funding to develop and deliver transport and infrastructure improvements contained within the report.	Yes
14 Feb 2023	Executive	EXEMPT – Hotel Commercial Loan Extension	To consider an extension to the current loan arrangements	Yes
7 Mar 2023	Executive	Special and Educational Needs and Disabilities	To seek approval from Executive to undertake a Local Government SEND Peer Challenge in preparation for the Local Area SEND Inspections which will begin in 2023	No
7 Mar 2023	Executive	Adult Social Care: Respite Charging	To seek approval for the proposed changes to the charging policy for respite care services.	Yes
7 Mar 2023	Executive	Highways Capital – Priority Assessment Review and Forward Works Programme	To approve the revised prioritisation process undertaken to address the approach to Red/Amber carriageway defects	Yes
7 Mar 2023	Executive	Developing a new Nunthorpe Community Facility	To seek approval of the recommendations to locate a new community centre on land within Nunthorpe ward	Yes
7 Mar 2023	Executive	Selective Landlord Licensing - Responses to the Consultation and Approval to Designate the Newport 2 Area	The purpose of this report is to present and consider the outcome of the ten week consultation and to recommend that the area of Newport shown in Appendix A is designated for Selective Landlord Licensing.	Yes
8 Mar 2023	Executive Member for Finance and Governance	Extension of Transitional Relief and Supporting Small Business – Non-Domestic Rates	The purpose of the report is to set out the need for a scheme, which is to be based on central government guidance dated 20 December 2021, for the year commencing 01 April 2022	No





### **SECTION 3 – DECISIONS TO BE TAKEN UP UNTIL THE COUNCIL MEETING**

There are no decisions to be taken during this time period

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## **SECTION 4 – DECISIONS TO BE TAKEN FOLLOWING THE COUNCIL MEETING**

DATE	PROPOSED DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
4 Apr 2023	Executive Member for Finance and Governance	Discretionary Rate Relief Policy	Update to the Discretionary Rate Relief Policy - covering mandatory and charitable rate relief, part occupation and hardship relief	Yes
4 Apr 2023	Executive	Schools Capital Programme Report 2023	The report sets out new school capital schemes and investments to be added to the Schools Capital Programme for delivery in 2023 and beyond.	Yes
4 Apr 2023	Executive	Middlehaven - Electricity Reinforcement Works	The report is seeking approval from Executive for funding to facilitate the upgrade of electricity provision in Middlehaven.	Yes
7 Apr 2023	Executive Member for Finance and Governance	Partly and Wholly Owned Council Companies policy	To put in place a governance framework to guide the establishment and review of any future or current companies that are partly or wholly owned by the Council to ensure alignment with recently released CIPFA best practice guidance on the matter	No
1 May 2023	Executive	Approach to Nutrient Neutrality and delivery of Middlesbrough Council housing schemes	To discuss the approach to Nutrient Neutrality and delivery of Middlesbrough Council housing schemes. The proposals will meet financial thresholds.	No

DATE	PROPOSED DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
9 May 2023	Executive	Children and Young People's Learning Scrutiny Panel Service Response: Youth Offending and Partnership Working with Schools	Children and Young People's Learning Scrutiny Panel Service Response	No
31 May 2023	Executive	Final Report of the Culture and Communities Scrutiny Panel - Off Road Bikes	The aim of the panel's investigation was to consider Middlesbrough Council's and Cleveland Police's approach to Off road bikes, following concerns within the community and recent media attention.	No
1 Jun 2023	Executive	EXEMPT - Newham Hall - Collaboration with Homes England - Part B	To seek Executive approval to enter into a Collaboration Agreement with Homes England to develop the Newham Hall housing site.	Yes
1 Jun 2023	Executive	Breastfeeding Borough Declaration	to outline summary of a proposed local authority declaration on breastfeeding also known as 'Breastfeeding Boroughs'.	Yes
1 Jun 2023	Executive	Healthy Weight Declaration Adoption	This report outlines the purpose and process of signing up to the Healthy Weight Declaration in Middlesbrough.	Yes
1 Jun 2023	Executive	Tees Advanced Manufacturing Park – Phase 2 Funding Agreement	Executive to approval an additional 1.5 million pounds of capital which will be repaired through retention through business rates of the enterprize zones site.	Yes
1 Jun 2023	Executive	Newham Hall - Collaboration with Homes England - Part A	To seek Executive approval to enter into a Collaboration Agreement with Homes England to develop the Newham Hall housing site.	Yes
4 Jul 2023	Executive	Tees Valley Waste Report	To seek approval for MBC to enter with seven other councils a Special Purpose Vehicle company in order to manage the Tees Valley energy recovery facility that will be responsible for the disposal of Middlesbrough municipal waste.	Yes

DATE	PROPOSED DECISION MAKER	ISSUE	PURPOSE OF REPORT	KEY DECISION
4 Jul 2023	Executive	Refugee Resettlement	To seek agreement to resettle 5 families per year, being a mixture of ARAP/ACRS and UKRS.	Yes
TBA	Executive	Adult Social Care Reform Update (Date TBA)	To update Executive of local progress against central government's Adult Social Care reform agenda and the planned commencement of inspections of Adult Social Care by the Care Quality Commission in 2023	Yes

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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	The Chair of Overview and Scrutiny Board and the Director of Legal and Governance Services
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<b>Submitted to:</b>	Council
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<b>Date:</b>	29 March 2023
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<b>Title:</b>	Scrutiny Progress Report
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<b>Report for:</b>	Information
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	All
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<b>Key decision:</b>	No
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<b>Why:</b>	Not applicable
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<b>Urgent:</b>	No
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<b>Why:</b>	Not applicable
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<b>Executive summary</b>	
To update the position in respect of the Council's Overview and Scrutiny Board and scrutiny panels. The current position regarding progress made by the Board and each of the panels is set out below.	

**Purpose**

1. To update the position in respect of the Council's Overview and Scrutiny Board and scrutiny panels.

**Background and relevant information**

**OVERVIEW AND SCRUTINY BOARD**

2. The Overview and Scrutiny Board met on 22 February 2023.

At that meeting the Board considered / received information in respect of the following:

- Executive Forward Work Programme.
- Corporate Performance Update: Quarter Three 2022-2023.

- Revenue can Capital Budget – Projected Outturn Position as at Quarter Three 2022/23.
- Children’s Finance Improvement Plan.
- The Statutory Finance Report (Section 25 Report).
- Mayoral Budget Proposals 2023/24, MTFP and Investment Strategy, including outcome of Consultation.
- Final Report of the Children and Young People’s Learning Scrutiny Panel.
- Final Report of the Culture and Communities Scrutiny Panel.
- Scrutiny Chairs Updates.

## **SCRUTINY PANEL UPDATES**

3. The updated position in respect of the work of each of the Council’s scrutiny panels is shown below.

### **Adult Social Care and Services Scrutiny Panel**

4. The Adult Social Care and Services Scrutiny Panel last met on 8 February 2023.
5. Members received updates from the Director of Adult Social Care and Health Integration regarding the Integration of Health and Social Care, and the Recruitment and Retention of Staff Within Adult Social Care.
6. The Scrutiny Panel’s next meeting is scheduled to take place on 29 March 2023. At this meeting, Members will receive updates regarding the Integration of Health and Social Care, and the Cost of Living Impacts on Adult Social Care.

### **Children and Young People’s Learning Scrutiny Panel**

7. The Children and Young People’s Learning Scrutiny Panel met on 13 February 2023. At that meeting, as a result of a Notice of Motion submitted to Council on 30 November 2022, the scrutiny panel considered an assessment of the costs associated with an extension of Middlesbrough’s Free School Meal offer to include 3 and 4 year olds in nursery and primary schools in the borough.
8. Karen Smith, the Head of Achievement was in attendance to provide an overview of the proposal and the associated costs.
9. Although the scrutiny panel recognised the key benefits of providing a healthy school meal, Members highlighted concerns that extending free school meal provision to only the 3 and 4 year old cohort attending maintained settings would have been considered discriminatory against those children attending Private, Voluntary and Independent (PVI) nurseries, childminders or academy sector provision. Subsequently, the scrutiny panel considered that the only option available would have been to extend free school meal provision to ALL 3 and 4 year olds and that would have resulted in the Council incurring significant costs (£1,748,000 in the first year). Therefore, given the Council’s current financial position, the scrutiny panel supported the officer’s recommendation - That the extension of free school meal provision, to include 3 and 4 year olds, would have been highly expensive and was not affordable at present.
10. At the meeting on 13 February, the scrutiny panel also agreed its final report and recommendations for submission to Executive, following its review of Youth Offending and Partnership Working with Schools.
11. The scrutiny panel last met on Monday 20 March 2023. At that meeting, the Head of Achievement was in attendance to provide information on the Learning and Education Strategy, setting out the



current context for learning in Middlesbrough and outlining how the Education Partnership works to improve the outcomes for children and young people accessing education in Middlesbrough.

### **Children and Young People's Social Care and Services Scrutiny Panel**

12. Since the last update to Council, the Scrutiny Panel met on 17 January, 14 February and 14 March 2023.
13. At its 17 January meeting, the Panel received further evidence in relation to its current scrutiny topic from Middlesbrough Community Learning. Members heard how the Post-16 Alternative Provision and Apprenticeship Teams in particular help vulnerable young people to achieve their learning and employment goals with support tailored to meet the individual's needs. The Panel also received an update in relation to the findings of the Ofsted Monitoring Visit to the Pathways (Leaving Care) Service in November 2022.
14. At its meeting on 14 February, the Panel held its final evidence-gathering session and received information from the Tees Valley Children in Care Service (Harrogate and District NHS Foundation Trust) in relation to how the physical and mental health needs of children in care and care leavers are met by the service.
15. The Head of Resident and Business Support also attended the meeting to provide the Panel with an overview of potential future accommodation provision, particularly in relation to care leavers, that was being developed in partnership with housing providers.
16. The Panel last met on 14 March 2023 to consider its draft final report – Supporting Young People to Prepare for Adulthood and Independence – and agreed its conclusions and recommendations arising from its investigation. The Final Report is scheduled to be submitted to the Overview and Scrutiny Board for consideration on 28 March 2023.

### **Culture and Communities Scrutiny Panel**

17. The Culture and Communities Panel met on Thursday 26 January 2023 and received an update from the then, Interim Head of Strategy, Information and Governance, on the Surveillance Policy.
18. The panel also agreed the final report on off road bikes, which will be submitted to the Executive in due course.
19. The date of the next meeting of the panel is 23 March 2023.

### **Economic Development, Environment and Infrastructure Scrutiny Panel**

19. The Economic Development, Environment and Infrastructure Scrutiny Panel met on 18 January and 15 February 2023. At the January meeting the Panel began to look at its new scrutiny topic of Business Rates Pooling and received an overview from the Head of Finance and Investment.
20. At the February meeting the Panel received information in relation to Planning Enforcement from the Head of Planning. The Panel were informed of the different actions that could be taken by the Council and how enforcement action was prioritised.
21. The Panel also received an updated from Councillor Branson in relation to the mass morbidity of crustaceans that had taken place along the north east coast. Investigations into the possible cause was still ongoing and the latest Government evidence suggested that the deaths may have been caused by a pathogen.

22. At the next meeting, which is scheduled for 22 March 2023, the Panel will return to its current scrutiny topic of Business Rates Pooling, with a guest speaker from Leeds City Council, who have successfully participated in a pool for a number of years.

### **Health Scrutiny Panel**

27. The Health Scrutiny Panel met on 21 March 2023. The Panel received information from the Chief Executive of Teesside Hospice who updated Members on the work of Teesside Hospice and services it offers around end of life and palliative care.

28. The Panel also received an update around investment in urgent care services in Middlesbrough and Redcar and Cleveland. Plans for this investment included GP out of hours services to move from North Ormesby to the James Cook site

### **Tees Valley Joint Health Scrutiny Committee**

29. The Tees Valley Joint Health Scrutiny Committee (TVJHSC) met on 17 March 2023.

At its meeting on the 17 March 2023 the Committee considered the following:-

- Update on NHS Dental Services - Tees Valley
- Tees, Esk and Wear Valley NHS Foundation Trust - Quality Account
- Community Diagnostic Centres
- Clinical Services Strategy Update
- Work Programme

### **Tees Valley Combined Authority Overview and Scrutiny Committee**

30. The Tees Valley Combined Authority Overview and Scrutiny Committee met on 2 March 2023.

31. At its meeting on the 2 March 2023 the Committee considered the following:-

- Martin Waters, Business Growth Manager of TVCA delivered a presentation to the committee on supporting local businesses.
- Councillor Bob Cook from Stockton Council together with Shona Duncan Head of Education & Skills at TVCA presented a report with an update on the activity and forward plan to date. The Committee sought clarity on the number of apprentices in Tees Valley and were informed that there were around 500 live vacancies at this time.
- The TVCA Monitoring Officer discussed the requirements for the Committee to either deal with presentations or reports.
- It was explained that the time of the next meeting could not be confirmed until after the May elections, when new members would have been ratified by TVCA cabinet.
- Overview & Scrutiny Annual Report 2022-2023
- UK Shared Prosperity Fund – Business Update
- EES Update

### **SCRUTINY REPORTS SUBMITTED TO EXECUTIVE**

32. Since the last update to Council, the following Final Scrutiny report has been submitted to Executive:-

Executive – 24 January 2023 - Final Report of Adult Social Care and Services Scrutiny Panel in respect of a review of the role of the Voluntary and Community Sector (VCS) in supporting Adult Social Care (with a focus on COVID-19 and Recovery).

### **What decision(s) are being recommended?**

33. That Council note the report.

### **Rationale for the recommended decision(s)**

34. The Constitution requires the Council to be provided with an update with regard to the work of the Overview and Scrutiny function.

### **Other potential decision(s) and why these have not been recommended**

35. That an update on the work of the scrutiny function is not provided to full Council. This would not comply with the requirements for updates on the scrutiny function, to be reported to full Council.

### **Impact(s) of the recommended decision(s)**

#### ***Legal***

36. The Constitution requires regular updates on the scrutiny function, to be submitted to full Council.

#### ***Strategic priorities and risks***

37. The relevant risks this decision would influence are cited below, with an explanation as to why they are relevant and how it would affect each risk.

<b>Risk No</b>	<b>Risk Description</b>	<b>Impact</b>
O8-054	Failure to adhere to Local Code of Corporate Governance and deliver governance improvements outlined in the Annual Governance Statement.	If updates on the work of the scrutiny function were not provided to Council, it would not be in accordance with the requirements of the Constitution.

#### ***Human Rights, Equality and Data Protection***

38. The subject of this report is not a policy, strategy, function or service that is new or being revised. It is considered that an equality impact assessment is not required.

#### ***Financial***

39. There are no financial implications arising from the recommendations within this report

### **Actions to be taken to implement the recommended decision(s)**

<b>Action</b>	<b>Responsible Officer</b>	<b>Deadline</b>
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**Appendices**

1	
2	
3	

**Background papers**

Body	Report title	Date

**Contact: Charlotte Benjamin**  
**Email: [charlotte\\_benjamin@middlesbrough.gov.uk](mailto:charlotte_benjamin@middlesbrough.gov.uk)**

**COUNCIL MEETING – 29 MARCH 2023  
NOTICE OF MOTION**

**COUNCIL PROCEDURE RULE NOS. 53-60**

MOTION NO.	PROPOSER	SECONDER	MOTION
158	Councillor Wright	Councillor High	<p>Looked after children and young people and care leavers a protected characteristic</p> <p>Middlesbrough Council resolves that ‘looked after children and young people and care leavers’ be added as an additional characteristic in the Council’s Equality Impact assessments to determine the impact on care experienced people, alongside those who formally share a protected characteristic.</p>
159	Councillor M Storey	Councillor J Walker	<p>Retiring Councillors</p> <p>Middlesbrough Council recognises the service of Councillors who are not intending to seek re-election at the forthcoming elections. Being an elected official is a privilege. All members make a time commitment to the benefit of the town. This can often impact their work and time with family.</p> <p>This Council therefore recognises the dedication of retiring members to their wards and the wider town.</p> <p>This Council resolves:-</p> <ul style="list-style-type: none"> <li>- The Chair of the Council will write to those members standing down and put on record the Council’s thanks for their service.</li> </ul>

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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Finance and Executive Member for Finance and Governance
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<b>Submitted to:</b>	Council
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<b>Date:</b>	29 March 2023
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<b>Title:</b>	Border to Coast Governance Arrangements
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	All
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<b>Key decision:</b>	Not applicable
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<b>Why:</b>	Not applicable
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<b>Urgent:</b>	Yes
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<b>Why:</b>	Decision required before 1 April 2023 so documents can be approved before Cumbria County Council (administering authority of one of the other Border to Coast Partner Funds) changes status.
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### Executive summary

This Report informs the Council of proposed changes to the governance documents relating to Border to Coast Partnership Pensions Limited ('Border to Coast') and its relationship with the Council and seeks Council approval for amended versions of those documents.

## **Purpose**

1. The purpose of the report is to ask Council to approve some required updates to the documents setting out how Border to Coast is governed.

## **Background and relevant information**

2. At its meeting on 15 February 2017, the Council agreed to take up shares in and become a member of a separate company Border to Coast Pensions Partnership Limited (“Border to Coast”) as the Council’s chosen means of meeting its obligation as Administering Authority of the Teesside Pension Fund to pool the investment of its Pension Fund assets with other Funds.
3. Border to Coast is jointly owned by the following eleven (initially twelve before the Northumberland / Tyne and Wear Pension Fund merger) administering authorities:
  - Bedford Borough Council
  - Cumbria County Council
  - Durham County Council
  - The East Riding Of Yorkshire Council
  - Lincolnshire County Council
  - Middlesbrough Council
  - North Yorkshire County Council
  - The Council of the Borough of South Tyneside
  - South Yorkshire Pensions Authority
  - Surrey County Council
  - Warwickshire County Council
4. As part of the decision to join Border to Coast, the Council agreed to enter into certain documents setting out the way in which Border to Coast would be governed. In particular, the Council has entered into the following two agreements.
5. Firstly, there is an Inter Authority Agreement between the local authorities that are part of the pooling arrangement, this governs the relationship between the authorities and the co-ordination of the management and monitoring of Border to Coast. This Agreement records the intention of the local authorities to pool their fund assets through the Border to Coast arrangement and establishes the existence and Terms of Reference of a Joint Committee of the pooling authorities to oversee the pooling arrangements and the work and performance of the company.
6. Secondly (along with the other local authorities that are part of the pooling arrangement) the Council entered into a Shareholder Agreement governing the relationship between Border to Coast as a company and the pooling authorities as shareholders of the company. This Agreement sets out the basis on which the company was established as a company jointly under the control of local authorities and so one to which the authorities are able to award contracts without going through the competition requirements of procurement law. The Shareholder Agreement establishes the internal company decision-making arrangements which evidence the necessary degree of local authority control to be able to utilise this exception to procurement rules.



7. It is over five years since Border to Coast was established, and six years since the initial governance framework was approved by Council. Since then, the business has matured (as of the end of March 2022 it was responsible for managing c. £38 billion of Partner Fund assets), Tyne and Wear and Northumberland pension funds have merged, there has been regulatory change, and best practice with respect to both corporate governance and the governance of arms' length public bodies has evolved.
8. A review has therefore been undertaken of the shareholder governance arrangements. In undertaking the review, consideration was given to:
  - The lessons learnt from the first few years of pooling from Border to Coast;
  - Lessons learnt from other pools in the UK;
  - Lessons from other Local Authority jointly owned companies; and
  - Lessons learnt from other pools internationally.
9. This has led to proposed amendments to the Inter Authority Agreement and the Shareholder Agreement together with the Articles of Association of the company, which outline the rules and regulations of the company.
10. Approval of the Inter Authority Agreement and Shareholder Agreement are a matter for Council and copies of the amended versions of these Agreements are attached as Appendix A and Appendix B to this Report respectively. The versions of the documents attached at Appendices A and B are clean copies which do not show the changes from the original. However, the changes are described in general terms below.

### **The Inter Authority Agreement (IAA)**

11. The main changes to the IAA comprise the following (please note this is not an exhaustive list and does not note typographical amendments or minor drafting changes):
  - a) Updating statutory references, for example in relation to data protection laws;
  - b) Updating the document to take into account the merger of Northumberland County Council into the Council of the Borough of South Tyneside (and adding some enabling provisions should other mergers take place in the future);
  - c) Removing provisions that related to the period before the establishment of Border to Coast as they are no longer relevant (for example, the establishment of the Joint Committee);
  - d) Adding provisions to make clear that when an Authority withdraws from the Agreement it will cease to be a member of the Joint Committee (clause 11.1.2);
  - e) Updating the terms of reference of the Joint Committee (at Schedule 1) to take into account that the first phase (pre establishment of Border to Coast and commencement of operations) has been completed;
  - f) Clarifying the terms of office for the Chair and Vice Chair of the Joint Committee, to terms of two years with a maximum of two terms (Schedule 2 – Constitution of the Joint Committee); and

- g) Adding a new term of reference for the Joint Committee which permits, in cases of urgency, decisions to be taken on behalf of the Joint Committee by the Host Authority in consultation with the Chair and Vice Chair.

### **The Shareholder Agreement (SHA)**

- 12. The SHA documents the relationship of the Border to Coast Partner Funds to each other in their capacities as shareholders of Border to Coast and overrides the provisions of the Articles.
- 13. The main changes made to the SHA include (again please note this is not an exhaustive list and does not note typographical amendments or minor drafting changes):
  - a) Removing provisions relating to pre-establishment that are no longer relevant;
  - b) Altering the proportion of Shareholders required for majority consent from 75% to 66.6%, which will continue to be in line with public procurement requirements for joint control of a company.
  - c) Including provisions from a Supplemental Agreement executed on 6 October 2020. This amended the SHA to include additional provisions relating to when capital contribution calls may be made on the Partner Funds for expenses resulting from Border to Coast's capacity as an authorised alternative investment fund manager (clauses 4.11 – 4.19). It should be noted that the original drafting from the Supplemental Agreement related to the Border to Coast Authorised Contractual Scheme; this has been extended to cover unregulated arrangements (such as limited partnerships);
  - d) Amending the provisions relating to record keeping so it is not necessary for Partner Funds to use their powers to ensure Border to Coast maintains accounting and financial records. The company is responsible for ensuring compliance in this area (clause 6.8);
  - e) Removing the requirement for Partner Funds to approve Border to Coast's conflicts policy, as this is not necessary (clause 6.9);
  - f) With respect to the provision of information to Shareholders, management accounts will now need to be provided within 90 days of the end of the quarter instead of 30. This provides greater flexibility for the Company which experience has shown would be useful (clause 14);
  - g) Including a framework in a new schedule to the agreement with details of how a merger of two authorities may be managed (although allowing flexibility depending on the circumstances) (clause 15.3);
  - h) Updates to the Reserved Matters which require unanimous Shareholder approval, including:
    - i) Excluding agreements to provide services to Shareholders as customers approved under the Strategic Plan (Schedule 1 Part A paragraph 3);

- ii) Excluding amendments to the Articles required by a direct request from the Financial Conduct Authority (FCA) or following legal advice (it should be noted that a special resolution requiring the consent of 75% of the Shareholders will still be required) (Schedule 1 Part A paragraph 12);
  - iii) Excluding the approval of the removal or appointment of interim directors (previously Schedule 1 Part A paragraph 15);
  - iv) Excluding the requirement for consent to defend claims (although consent is still required to commence or settle any claims); and also excluding non-material claims of £1m or less (Schedule 1 Part A paragraph 15); and
  - v) Excluding the formation of a subsidiary of Border to Coast if done in accordance with the Strategic Plan (Schedule 1 Part A paragraph 17).
- i) Updates to the Reserved Matters which require approval by Shareholder Majority (which is now 66.6%) including:
- i) Rather than approving the annual accounts of the Company, Shareholder Approval is required for any proposal not to table the accounts at the Company's AGM (Schedule 1 Part B paragraph 5);
  - ii) Excluding the need to determine directors' remuneration, and instead approving a remuneration policy for directors (Schedule 1 Part B paragraph 6);
  - iii) Excluding approval being required to amend a pension scheme for employees of the Company (Schedule 1 Part B paragraph 7);
  - iv) Excluding entering into agency, distribution or similar agreements (previously Schedule 1 Part B paragraph 8);
  - v) Increasing the threshold for leases requiring consent to £500,000 (from £100,000) (Schedule 1 Part B paragraph 9).
- j) Finally, the list of shared objectives in Schedule 2 has been amended to include the objective to primarily invest assets through the collective investment vehicle operated by Border to Coast, which was already recorded in the IAA.

## Articles of Association

14. The Articles of Association are a company document, approved through company decision-making. The changes being made to the Articles of Association have been approved on behalf of the Mayor who exercises the Council's company shareholding in Border to Coast. It does not require approval from the Council as part of this decision.

15. Minor updates are being made to the Articles, which include:

- a) Increasing the maximum number of directors from 8 to 10;
- b) Amending the required quorum for General Meetings of Shareholders to 66.6% to match the majority requirements that will now be set out in the SHA; and

c) changes relating to the redeeming of class B shares in order to meet FCA regulatory requirements that in order for shares to qualify as Tier 1 regulatory capital, they must not be redeemable and cannot be reduced or repaid other than on liquidation.

16. Independent external specialist legal advice has been obtained on behalf of all local authority funds to review these documents, and overall the governance framework and legal documentation is considered to be fit for purpose and the exercise has been about evolution of approach. The conclusion of the external legal advice is that the amendments that have been proposed are acceptable from a legal perspective and can be agreed by the local authorities involved in the pooling arrangement.

17. In addition, the Head of Pensions Governance and Investments has reviewed the documents, has no issues with the documents and is in agreement with the external advice.

### **Future Decision-Making**

18. As can be seen from the Report, Border to Coast is now a well-established company with robust governance and access to specialist legal and other advisors. Given the generally administrative nature of the changes made to the governance documents as a result of the recent review it is felt that a delegation to the Pension Fund Committee to approve such changes in future is appropriate. This would not prevent future reports coming to Council where changes to the governance documents raised fundamental issues of principle. This proposal would be affected through the approval of the third recommendation below.

### **What decision(s) are being recommended?**

19. That the Council:

- Agree to approve the revised Border to Coast Inter Authority Agreement attached at Appendix A.
- Agree to approve the revised Border to Coast Shareholder Agreement attached at Appendix B.
- Agree that approval of future amendments to the Border to Coast governance documents is delegated to the Pension Fund Committee.

### **Rationale for the recommended decision(s)**

20. The revisions to the Border to Coast governance documents are appropriate, proportionate and necessary to ensure the company can continue to deliver positive outcomes for the Partner Funds.

### **Other potential decision(s) and why these have not been recommended**

21. The only other option would be not to approve these documents. This is not recommended because it would be to the detriment of the Teesside Pension Fund, the Council and the other Partner Fund administering authorities.

## **Impact(s) of the recommended decision(s)**

### ***Legal***

22. As set out above.

### ***Strategic priorities and risks***

23. The continuing success of pension fund investments through Border to Coast will ultimately keep employer pensions contributions at a lower level so allowing more resources to be available to spend on the Council's key priorities.

### ***Human Rights, Equality and Data Protection***

24. No direct implications of this specific decision in relation to human rights of the Equality Act 2010 have been identified. References to Data Protection laws within the Border to Coast governance documents have been updated.

### ***Financial***

25. There are no direct implications arising from the report. The costs of obtaining legal advice in relation to the preparation and review of the governance documents has been met jointly with other Partner Funds through the Pension Fund budget, which does not directly impact on Council budgets.

### **Actions to be taken to implement the recommended decision(s)**

<b>Action</b>	<b>Responsible Officer</b>	<b>Deadline</b>
Arrange execution of the governance documents	Nick Orton, Head of Pensions Governance and Investments	31 <sup>st</sup> March 2023

### **Appendices**

<b>1</b>	<b>Inter Authority Agreement</b>
<b>2</b>	<b>Shareholder Agreement</b>
<b>3</b>	

### **Background papers**



**Contact: Nick Orton, Head of Pensions Governance and Investments**  
**Email: [nick\\_orton@middlesbrough.gov.uk](mailto:nick_orton@middlesbrough.gov.uk)**

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Dated: 2023

- (1) BEDFORD BOROUGH COUNCIL
- (2) CUMBRIA COUNTY COUNCIL
- (3) DURHAM COUNTY COUNCIL
- (4) THE EAST RIDING OF YORKSHIRE COUNCIL
- (5) LINCOLNSHIRE COUNTY COUNCIL
- (6) MIDDLESBROUGH BOROUGH COUNCIL
- (7) NORTH YORKSHIRE COUNTY COUNCIL
- (8) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE
- (9) SOUTH YORKSHIRE PENSIONS AUTHORITY
- (10) SURREY COUNTY COUNCIL
- (11) WARWICKSHIRE COUNTY COUNCIL

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**Amended and Restated Agreement to cooperate in the pooling of  
Local Government Pension Scheme investments**

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**BETWEEN**

- (1) **Bedford Borough Council**, of Borough Hall, Cauldwell Street, Bedford, MK42 9AP;
- (2) **Cumbria County Council**, of 117 Botchergate, Carlisle, CA1 1RD;
- (3) **Durham County Council**, of County Hall, Durham, DH1 5UE;
- (4) **The East Riding Of Yorkshire Council**, of County Hall, Beverley HU17 9BA;
- (5) **Lincolnshire County Council**, of County Offices, Newland, Lincoln, LN1 1YL;
- (6) **Middlesbrough Borough Council**, of Fountain Court, 119 Grange Road, Middlesbrough, TS1 2DT;
- (7) **North Yorkshire County Council**, of County Hall, Northallerton, North Yorkshire, DL7 8AL;
- (8) **The Council of the Borough of South Tyneside**, of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL;
- (9) **South Yorkshire Pensions Authority**, of Oakwell House, 2 Beevor Court, Pontefract Road, Barnsley, South Yorkshire, S71 1HG;
- (10) **Surrey County Council**, of Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF; and
- (11) **Warwickshire County Council**, of PO Box 3, Shire Hall, Warwick, CV34 4RL

together called "the **Authorities**"

**BACKGROUND**

**WHEREAS**

- (A) The Authorities are each administering authorities within the Local Government Pension Scheme and within the meaning of the Local Government Pension Scheme Regulations 2013. They each administer, maintain and invest their own respective funds within the LGPS in accordance with those Regulations and the LGPS Investment Regulations.
- (B) The Authorities are the sole shareholders in Border to Coast Pensions Partnership Limited ("**BCPP**") a controlled company within the meaning of the Companies Order. They have separately entered into the Shareholders' Agreement to record the terms of their relationship with each other as shareholders in relation to BCPP and to regulate certain aspects of the affairs and their dealings with BCPP.
- (C) The Authorities, along with Northumberland County Council, entered into an agreement dated 6 June 2017 relating to arrangements between those parties in the pooling of Local Government Pension Scheme assets through BCPP (the "Original Agreement").
- (D) That part of the Local Government Pension Scheme previously administered by Northumberland County Council was merged into the Tyne and Wear Pension Fund with effect from 1 April 2020. Following the merger Northumberland County Council ceased to be an administering authority within the Local Government Pension Scheme and is no longer a shareholder in BCPP. All of its obligations under the Original Agreement were assumed by the Council of the Borough of South Tyneside with effect from 1 April 2020.

- (E) As BCPP has now been operating for several years, the Authorities believe it is appropriate to review and update the governance arrangements. The Host Authority has proposed, under clause 10.1 of the Original Agreement, the amendments contained in this Agreement. The other Authorities have each approved the proposed amendments in accordance with clause 10.3 of the Original Agreement. The Authorities are therefore entering into this Agreement to amend and restate the Original Agreement.
- (F) The Authorities are local authorities within the meaning of the Local Government Act 1972 and have established and participated in a Joint Committee known as the Border to Coast Pensions Partnership Joint Committee which is responsible for the delivery of the Specified Functions.
- (G) The Authorities have entered into this Agreement in reliance inter alia on the rights given to local authorities to undertake administrative arrangements of this nature in sections 101, 102, 103, 112 and 113 of the Local Government Act 1972 and the Regulations made under these Acts; in order to discharge their functions to administer, maintain and invest their respective funds, together with, where applicable, the general power of competence within section 1 of the Localism Act 2011 and the supporting provisions within section 111 Local Government Act 1972.
- (H) Neither the execution of this Agreement nor the carrying on of activities under it is intended by the Authorities to constitute the carrying on of any "regulated activity" under section 19 of the Financial Services and Markets Act 2000 ("FSMA"). In particular, the Joint Committee shall not constitute the establishment or operation of a "collective investment scheme" under s235 of FSMA.

## **OPERATIVE PROVISIONS**

### **IT IS HEREBY AGREED AS FOLLOWS**

#### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

<b>"ACS"</b>	an authorised contractual scheme within the meaning of section 235A of the Financial Services and Markets Act 2000
<b>"Agreement"</b>	this Agreement
<b>"Agreement Personal Data"</b>	the Personal Data which is processed by the Authorities pursuant to this Agreement
<b>"Authorities"</b>	(1) at the Commencement Date and until such time as an Authority withdraws from this Agreement the authorities who are parties to this Agreement and (2) after the withdrawal of an Authority from this Agreement those authorities who remain parties to this Agreement and (3) from such time as another authority becomes party to this Agreement that authority and the other authorities who are parties to this Agreement and each an <b>"Authority"</b>
<b>"BCPP"</b>	Border to Coast Pensions Partnership Limited a company incorporated in England and Wales (registered number 10795539) and wholly owned by the Authorities
<b>"Business Days"</b>	a day that is not a Saturday, Sunday or public or bank holiday in England or Wales

<b>"Commencement Date"</b>	the date of this Agreement
<b>"Companies Order"</b>	The Local Authorities (Companies) Order 1995
<b>"Constitution"</b>	the Constitution of the Joint Committee set out at <b>Schedule 2</b>
<b>"Data Protection Authority"</b>	means any organisation which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation, including the Information Commissioners Office (or any joint, like, replacement or successor organisation from time to time)
<b>"Data Controller"</b>	has the same meaning as given to it under the Data Protection Legislation
<b>"Data Processor"</b>	has the same meaning as given to it under the Data Protection Legislation
<b>"Data Protection Legislation"</b>	means all privacy laws applicable to the personal data which is Processed under or in connection with this Agreement, including the DPA and the UK GDPR (as defined in the DPA), and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other guidance on the foregoing issued by any relevant Data Protection Authority, all as amended, updated and/or replaced from time to time
<b>"DPA"</b>	Data Protection Act 2018, as amended, updated and/or replaced from time to time
<b>"Exempt Information"</b>	any information relating to this Agreement which may be: <ul style="list-style-type: none"> <li>- exempt from disclosure under the Freedom of Information Act 2000 (as updated, amended, or replaced from time to time); or</li> <li>- excepted from disclosure under the Environmental Information Regulations 2004 (as updated amended, or replaced from time to time)</li> <li>- or otherwise does not fall to be disclosed because it is vexatious or compliance with the Information Request would exceed an applicable time and costs limit specified within the FOI Legislation</li> <li>- exempt from disclosure under section 100I and Schedule 12A of the Local Government Act 1972</li> </ul>
<b>"FOI Legislation"</b>	the Freedom of Information Act 2000 and subordinate legislation made under this, or the Environmental Information Regulations 2004 together with all codes of practice and other guidance on the foregoing issued by the Information Commissioner's Office or relevant government

	departments, all as amended, updated and/or replaced from time to time
<b>"Host Authority"</b>	the Authority referred to in Clause 7 hereof
<b>"Information Request"</b>	a request for information under FOI Legislation
<b>"Joint Committee"</b>	the statutory Joint Committee of elected members from the Authorities established by this Agreement which will be called the Border to Coast Pension Partnership Joint Committee
<b>"LGPS"</b>	the Local Government Pension Scheme in England and Wales
<b>"LGPS Investment Regulations"</b>	The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016
<b>"Officer Operations Group"</b>	a group of officers employed by the Authorities who will undertake the tasks described in Schedule 3
<b>"Original Agreement"</b>	the Agreement dated 6 June 2017 between the Authorities and Northumberland County Council which related to the arrangements between those parties in the pooling of Local Government Pension Scheme investments
<b>"Personal Data"</b>	as defined in the Data Protection Legislation
<b>"Process" and other derivations such as "Processed" and "Processing"</b>	means any use of Personal Data. For the avoidance of doubt, this includes, without limitation, storing, accessing, reading, using, copying, printing, revising, deleting, disclosing, transferring or otherwise using Personal Data
<b>"Secretary"</b>	the officer appointed in accordance with <b>Clause 7</b> hereof
<b>"Section 151 Officer"</b>	the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972
<b>"Shared Objectives"</b>	the objectives set out in <b>Schedule 4</b>
<b>"Shareholders' Agreement"</b>	the agreement between the Authorities which records the terms of their relationship with each other as shareholders in relation to BCPP and which regulates certain aspects of the affairs and their dealings with BCPP
<b>"Terms of Reference"</b>	the Terms of Reference of the Joint Committee set out at <b>Schedule 1</b>

**“Withdrawing Authority”**

an Authority which has given notice in accordance with clause 11 of this Agreement

- 1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.3 the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.5 unless the context otherwise requires:
- 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
  - 1.5.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.7 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word “other” or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.9 references to “in writing” or “written” are to communication effected by post and email or any other means of reproducing words in a legible and non-transitory form (but not fax);
- 1.10 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and
- 1.11 unless expressly stated otherwise, all obligations, representations and warranties on the part of two or more persons are (unless stated otherwise) entered into, given or made by such persons severally.

2. **AMENDMENT AND RESTATEMENT OF THE ORIGINAL AGREEMENT**

- 2.1 The Original Agreement is hereby amended and restated on the terms of this Agreement with effect from the Commencement Date and is a continuation of the Original Agreement.
- 2.2 The Original Agreement shall remain in full force and effect for any issues arising which pre-date the Commencement Date and be interpreted on the terms of the Original Agreement. This Agreement does not release any party to it from any breaches of the Original Agreement existing at the date of this Agreement or affect any existing rights that have accrued under the Original Agreement prior to the date of this Agreement.

3. **SHARED OBJECTIVES**

3.1 The Authorities agree so far as reasonably possible to pursue the Shared Objectives.

4. **GOVERNING PRINCIPLES**

4.1 Each of the Authorities agrees that they will:

4.1.1 Ensure they are properly represented on the committees, working parties and other bodies provided for by this Agreement.

4.1.2 Commit to provide agreed resources within agreed timescales; and

4.1.3 Involve and inform the other Authorities of developments they are pursuing elsewhere which are relevant to BCPP and will share the learning and benefits thereof.

5. **CONTINUATION OF THE JOINT COMMITTEE**

5.1 In exercise of their powers under sections 101(4) and 102(4) of the Local Government Act 1972, the Authorities hereby agree that the Joint Committee established by the Original Agreement shall continue in accordance with the terms of this Agreement.

5.2 The purpose of the Joint Committee is to undertake the activities set out in the Terms of Reference in Schedule 1.

5.3 The Joint Committee shall operate and conduct its business in accordance with the terms of this Agreement including the Constitution in Schedule 2 and the Terms of Reference and may create sub-committees and working groups to support its role including an Officer Operations Group.

6. **GOVERNANCE**

6.1 Each of the Authorities shall each ensure that it makes any changes to its own constitution as are necessary to facilitate the operation of this Agreement.

7. **HOST AUTHORITY AND OFFICER GROUPS**

7.1 The Joint Committee will from time to time designate one of the Authorities to act as Host Authority on behalf of the Joint Committee for the purposes of entering into contracts and any other BCPP related activity where a legal person is required to act.

7.2 From the Commencement Date the Council of the Borough of South Tyneside shall be designated as Host Authority.

7.3 The Host Authority will propose a budget for the operation of the Joint Committee for approval by the Joint Committee.

7.4 The Authorities will together and equally indemnify the Host Authority in respect of any claims, liabilities and costs incurred by virtue of its role as Host Authority when acting on behalf of the Authorities together.

7.5 The Joint Committee will designate an officer employed by one of the Authorities to be the Secretary.

7.6 From the Commencement Date South Yorkshire Pensions Authority shall designate an officer as Secretary.

7.7 The Authorities will together and equally indemnify the Secretary and their Authority in respect of any claims, liabilities and costs incurred by virtue of its role as Secretary.

7.8 The Officer Operations Group will provide support to the Joint Committee in accordance with the Group's terms of reference as set out in Schedule 4 by making arrangements and engaging on behalf of the Joint Committee with BCPP.

## 8. **COST SHARING**

8.1 Subject to clause 8.2 costs incurred in the operation of the Joint Committee (including the costs of officers providing support to the Joint Committee through the Officer Operations Group in accordance with this Agreement) will be borne by the Authority incurring them.

8.2 Costs incurred by the Host Authority in providing secretariat services to the Joint Committee and any other costs incurred by the Host Authority on behalf of the Joint Committee in its capacity as lead authority will be shared equally between the Authorities.

## 9. **TERMS OF REFERENCE**

9.1 The Joint Committee will meet from time to time (with support from the officers) to discuss and form a common view on the matters within the Terms of Reference.

9.2 The Joint Committee shall not make binding decisions on these issues but may make recommendations to each Authority to individually determine.

## 10. **VARIATION OF AGREEMENT**

10.1 Any of the Authorities may request a variation to this Agreement by making such a request in writing to the Secretary.

10.2 The Secretary shall circulate the request to each of the Authorities within 10 Business Days of receipt of the request for consideration and approval by the Authorities.

10.3 If the Authorities approve the variation then the Secretary shall arrange for the preparation of an appropriate deed of variation to this Agreement to be prepared for execution by all Authorities and such change shall only take effect upon completion of that deed and the costs associated with the preparation of such deed of variation shall be shared equally between the Authorities.

10.4 If one of the Authorities does not approve the variation then the variation to this Agreement shall not occur.

10.5 The Authorities may from time to time agree to vary this Agreement to enable any other administering authority to become a party to this Agreement, to be effected by the Authorities so that the other administering authority shall enter into a deed or variation on such terms as may be agreed, including but without prejudice to any cost sharing provisions which may apply to the existing Authorities.

## 11. **WITHDRAWAL FROM THIS AGREEMENT**

11.1 An Authority may withdraw from this Agreement in accordance with the following procedure:

11.1.1 Any Authority which wishes to withdraw from this Agreement shall give not less than twelve months written notice to expire on 31<sup>st</sup> March next following to the Secretary of its intention to do so. The Secretary shall consult the other Authorities upon which such notice has been served giving due consideration to:

11.1.1.1 any loss of funding arising from such withdrawal and including any non-payment, clawback or repayment of such funding whether due under this Agreement or otherwise; and

11.1.1.2 any other loss, liability, damage, claim or expense;

which would be incurred by the other Authorities upon which notice has been served by reason of such withdrawal from this Agreement.

- 11.1.2 Following the expiry of the notice given in clause 11.1.1, the Authority shall cease to be a member of the Joint Committee but shall be subject to the rest of this clause 11.
- 11.2 Should an Authority cease to be a shareholder in or to be contractually bound to BCPP then it shall be treated as having given notice of withdrawal under the provisions of Clause 11.1 hereof save that such notice shall have immediate effect. For the avoidance of doubt, an Authority who ceases to be both a shareholder in BCPP and a member of the Joint Committee shall continue to have responsibility for complying with regulation 7(2)(d) of the LGPS Investment Regulations (pooling requirements) in accordance with its own constitution but without reference to the other parties to this Agreement or BCPP.
- 11.3 An Authority wishing to withdraw from this Agreement undertakes as a condition of such withdrawal to make, prior to withdrawal, such reasonable payment or payments which fairly reflect the actual losses caused by or anticipated as a result of the withdrawal as shall be determined by the other Authorities and no notice under this clause 11 shall take effect unless and until such payment has been agreed.
- 11.4 Each Authority reserves the right to recover from any Withdrawing Authority the costs of any claims, costs, expenses, losses or liabilities of any nature or which have been caused by any act or omission of the Withdrawing Authority in connection with this Agreement and which are discovered after the withdrawal from this Agreement.
- 11.5 This clause 11.5 applies if any of the Authorities is abolished or ceases to be an administering authority in circumstances where another local authority becomes the administering authority in place of the Authority.
- 11.5.1 Where this clause applies, the Authority affected and the remaining Authorities shall, subject to any contrary provision in any statutory order made in connection with the abolition or change in administering authority, make such arrangements as are necessary to enable the Authority affected to withdraw from this Agreement and, where relevant, to be replaced as a party to this Agreement by the replacement administering authority or authorities, provided that the replacement administering authority so consents.
- 11.5.2 Where this clause applies, and subject to any contrary provision in any statutory order made in connection with the abolition or change in administering authority, the remaining Authorities and the replacement administering authority or authorities shall enter into a deed of variation in accordance with the variation process set out in clause 10.5.
- 11.5.3 For the avoidance of doubt, where an affected Authority withdraws from this Agreement in the circumstances set out in this clause 11.5, such withdrawal shall be deemed not to be a withdrawal for the purposes of clauses 11.1.

## 12. **TERMINATION OF THIS AGREEMENT**

- 12.1 The Authorities agree that this Agreement may be terminated upon terms agreed by all Authorities.
- 12.2 Upon termination of this Agreement the Authorities agree that the Joint Committee shall cease to exist.
- 12.3 Notwithstanding the termination of this Agreement the Authorities each agree to do all such acts and things and execute all such documents as each of them reasonably requires.
- 12.4 Following the termination of this Agreement the following provisions will continue in force to the extent relevant:



- 12.4.1 Clause 4 (Governing Principles) and Schedule 4 (Shared Objectives);
- 12.4.2 Clause 8 (Cost Sharing);
- 12.4.3 Clause 11 (Withdrawal from this Agreement);
- 12.4.4 Clauses 12 (Termination of this Agreement)
- 12.4.5 Clause 13 (Dispute Resolution);
- 12.4.6 Clause 14 (Notices);
- 12.4.7 Clause 15 (Information and Confidentiality);
- 12.4.8 Clause 16 (Data Protection);
- 12.4.9 Clause 17 (Freedom of Information),

together with any other provisions which expressly or impliedly continue to have effect after expiry or termination of this Agreement and all other rights and obligations will immediately cease, without prejudice to any rights, obligations, claims (including without limitation claims for damages for breach) and liabilities which have accrued prior to termination.

### 13. **DISPUTE RESOLUTION**

- 13.1 The Authorities undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this joint working arrangement) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Authorities.
- 13.2 In the event of any dispute or disagreement arising out of or in connection with this Agreement or any breach thereof ("a Dispute") an Authority may serve notice upon the other setting out brief details of the Dispute that has arisen ("Notice of Dispute") and the Notice of Dispute shall in the first instance be considered by the Section 151 Officers of the relevant Authorities or such other person as the Section 151 Officer may direct, which shall, acting in good faith, attempt to resolve such dispute.
- 13.3 Where the Section 151 Officers are unable to resolve such dispute within a period of 28 days or where in the opinion of the Section 151 Officers such dispute would be more effectively resolved in another forum the Section 151 Officers may refer such dispute to a suitably qualified and independent person as may be recommended by the section 151 Officers and to be agreed by the Authorities which are in dispute or in the event of failure within a period of 28 days to agree on such appointment a person nominated by the President of the Law Society who shall act as an expert.
- 13.4 Where a dispute is referred to a person appointed under clause 13.3 hereof that person shall determine the procedure and timetable for resolution of the said dispute at his or her absolute discretion and the decision of that person shall be binding on the Authorities.
- 13.5 For the avoidance of doubt, this **clause 13** applies only to disputes between the Authorities and does not apply to any dispute between the Authorities and BCPP.

### 14. **NOTICES**

- 14.1 Any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the party to be given the notice or communication and:

- 14.1.1 sent to that party's address by pre-paid first class post or mail delivery service providing guaranteed next working day delivery; or
- 14.1.2 delivered to or left at that party's address (but not, in either case, by one of the methods set out in **clause 14.1.1**).

The address and representative for each Authority are set out below and may be changed by that party giving at least 10 Business Days' notice in accordance with this **clause 14**.

**Bedford Borough Council**

Borough Hall, Cauldwell Street, Bedford, MK42 9AP

For the attention of: s151 Officer

**Cumbria County Council**

117 Botchergate, Carlisle, CA1 1RD

For the attention of: s151 Officer

**Durham County Council**

County Hall, Durham, DH1 5UE

For the attention of: s151 Officer

**The East Riding of Yorkshire Council**

County Hall, Beverley HU17 9BA

For the attention of: Director of Corporate Resources

**Lincolnshire County Council**

County Offices, Newland, Lincoln, LN1 1YL

For the attention of: s151 Officer

**Middlesbrough Borough Council**

Fountain Court, 119 Grange Road, Middlesbrough, TS1 2DT

For the attention of: s151 Officer

**North Yorkshire County Council**

County Hall, Northallerton, North Yorkshire, DL7 8AL

For the attention of: s151 Officer

**The Council of the Borough of South Tyneside**

Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL

For the attention of: s151 Officer

**South Yorkshire Pensions Authority**

Oakwell House, 2 Beevor Court, Pontefract Road, Barnsley, South Yorkshire, S71 1HG

For the attention of: s151 Officer

**Surrey County Council**

Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF

For the attention of: s151 Officer

**Warwickshire County Council**

PO Box 3, Shire Hall, Warwick, CV34 4RL

For the attention of: s151 Officer

14.2 Any notice or communication given in accordance with **clause 14.1** will be deemed to have been served:

14.2.1 if given as set out in clause **14.1.1**, at 9.00am on the 2<sup>nd</sup> Business Day after the date of posting; and

14.2.2 if given as set out in **clause 14.1.2**, at the time the notice or communication is delivered to or left at that party's address,

provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

14.3 For the purposes only of this **clause 14**, references to time of day are to the time of day at the address of the recipient parties referred to in **clause 14.2**.

14.4 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 14** were complied with.

15. **INFORMATION AND CONFIDENTIALITY**

15.1 Whilst acknowledging that meetings of the Joint Committee will ordinarily be open to the public, and that the Authorities intend to comply with their obligations under the FOI Legislation, the Authorities shall otherwise keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Agreement.

- 15.2 **Clause 15.1** shall not apply to:
- 15.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;
  - 15.2.2 Any matter which an Authority can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
  - 15.2.3 Any disclosure to enable a determination to be made under **Clause 13** (Dispute Resolution);
  - 15.2.4 Any disclosure which is required by any law (including any order of a court of competent jurisdiction, in compliance with the Data Protection Legislation, and/or the FOI Legislation), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - 15.2.5 Any disclosure of information which is already lawfully in the possession of the receiving Authority in its own capacity and available for its unconditional use, prior to its disclosure by the disclosing Authority;
  - 15.2.6 Any disclosure by an Authority to a department, office or agency of the Government; and
  - 15.2.7 Any disclosure to appropriate firms or audit bodies for the purpose of the examination and certification of an Authority's accounts.
- 15.3 Save for in relation to disclosures made under the FOI Legislation which cannot be made subject to imposed conditions, where disclosure is permitted under **clause 15.2**, the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Authority.

## 16. **DATA PROTECTION**

- 16.1 The Authorities shall be separate Data Controllers of the Agreement Personal Data. As such, the Authorities shall at all times comply with their obligations under the Data Protection Legislation. In doing so the Authorities shall:
- 16.1.1 to the extent required, maintain a valid and up to date registration or notification under the Data Protection Legislation covering any Processing of Agreement Personal Data;
  - 16.1.2 only undertake Processing of Agreement Personal Data that is reasonably required in connection with the operation of this Agreement and only as may be lawful under the Data Protection Legislation;
  - 16.1.3 not transfer any Agreement Personal Data to any country or territory outside the UK, notwithstanding their ability to do so under the Data Protection Legislation, save for any export of Agreement Personal Data which is compliant with the Data Protection Legislation which is necessary for the use of core IT services and systems operated by the Authorities in connection with this Agreement;
  - 16.1.4 implement appropriate technical and organisational measures to prevent unauthorised or unlawful Processing of Agreement Personal Data and against the accidental loss, or destruction of, or damage to Agreement Personal Data;
  - 16.1.5 promptly notify the other Authorities (and no later than within one working day) if they become aware of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction, loss, alteration, unauthorised or accidental disclosure of or access to the Agreement Personal

- Data Processed, or if it is corrupted or rendered unusable, which is reasonably likely to result in risks to the rights and freedoms of natural persons;
- 16.1.6 use their reasonable endeavours to restore or retrieve any personal data which is unlawfully or accidentally lost, destroyed, damaged, corrupted or made unusable;
  - 16.1.7 keep full, up-to-date and accurate records of any processing of Personal Data carried out pursuant to this Agreement;
  - 16.1.8 promptly respond to any request from one of the other Authorities to amend, transfer, delete or otherwise Process Personal Data; and
  - 16.1.9 not do anything (whether by act or omission) which would cause the other Authorities to be in breach of their obligations as Data Controllers of the Agreement Personal Data under the Data Protection Legislation.
- 16.2 The Authorities shall not disclose Agreement Personal Data to any third parties other than in compliance with the Data Protection Legislation, for example other than:
- 16.2.1 as required in law in response to a data subject access request under the DPA;
  - 16.2.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement; or
  - 16.2.3 to the extent required to comply with a legal obligation.
- 16.3 To the extent that any Authority acts as a Data Processor for and on behalf of one or more of the other Authorities in relation to the Agreement Personal Data Processed pursuant to this Agreement, the Data Processor and the Data Controller(s) shall enter into an agreement which complies with the terms of the Data Protection Legislation. In particular, the Data Processor shall:
- 16.3.1 only Process that Agreement Personal Data on the written instructions of the Data Controller(s) unless required by law to act without such instructions;
  - 16.3.2 ensure that all persons authorised to process the Agreement Personal Data have committed themselves to confidentiality or are under an appropriate statutory duty of confidentiality;
  - 16.3.3 take appropriate measures to ensure the security of Agreement Personal Data;
  - 16.3.4 not engage a sub-processor except with the prior consent of the Data Controller(s) and subject to a written contract being put in place with the sub-processor;
  - 16.3.5 assist the Data Controller(s) in providing subject access and allowing data subjects to exercise their rights under relevant Data Protection Legislation;
  - 16.3.6 assist the Data Controller(s) in meeting its/their Data Protection Legislation obligations in relation to Agreement Personal Data as regards the security of processing, the notification of personal data breaches and data protection impact assessments;
  - 16.3.7 in relation to the Agreement Personal Data, submit to audits and inspections, provide the Data Controller(s) with whatever information it/they need to ensure that they are complying with their obligations under the Data Protection Legislation in relation to the Processing and tell the Data Controller immediately if in its opinion an instruction infringes the Data Protection Legislation;

- 16.3.8 not transfer any Agreement Personal Data outside the UK to any jurisdiction that has not been determined as providing an adequate level of protection for Personal Data by the relevant Data Protection Authority or the UK Government, unless this is done with the express written agreement of the Data Controller(s) and it is necessary for the use of core IT services and systems operated by the Authorities, and is undertaken in compliance with Data Protection Legislation; and
- 16.3.9 on withdrawal from or termination of this Agreement, return all the Agreement Personal Data to the Data Controller(s) and securely delete and/or destroy any copies of the Agreement Personal Data which is Processed by the Data Processor pursuant to this Agreement, unless applicable laws permit retention of the Agreement Personal Data, in which case the relevant Authority(ies) agree(s) it (or they) shall retain the Agreement Personal Data securely and only for as long as strictly necessary in the capacity as a Data Controller.
- 16.4 Each Authority agrees to indemnify and keep indemnified and defend at its own expense the other Authorities against all costs, claims, damages and/or expenses (including legal and administrative) incurred by the other Authorities or for which the other Authorities may become liable due to any failure by that particular Authority, its employees or agents to comply with any of its obligations under this **clause 16**.
17. **FREEDOM OF INFORMATION**
- 17.1 The Authorities recognise that each Authority is a public authority as defined by FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request which shall be considered in accordance with this **Clause 17**.
- 17.2 The Authorities shall assist each other in complying with their obligations under FOI Legislation, as they relate to Information Requests made in relation to this Agreement, including but not limited to assistance without charge in gathering information to respond to an Information Request relating to this Agreement. For the avoidance of doubt, nothing in this **clause 17.2**, shall require an Authority to provide information, if the relevant information has not been held on behalf of the Authority that received the Information Request.
- 17.3 Where an Authority receives an Information Request in relation to this Agreement and another Authority holds information or records on behalf of that Authority, upon request, such other Authority agrees to provide the first Authority with a copy of all such information related to the Information Request, in the form that the first Authority reasonably requires within five business days (or such other period as the first Authority may reasonably specify) of the first Authority's request.
- 17.4 Each Authority, as a separate public authority, shall in its absolute and sole discretion, decide:
- 17.4.1 whether the Information Request is valid under the FOI Legislation, as well as all other considerations relevant in the assessment of an Information Request under the FOI Legislation, such as any considerations (as may be applicable) regarding the cost of complying with a request or any charges for responding to a request, whether the request is repeated, vexatious or manifestly unreasonable and any other relevant considerations;
- 17.4.2 whether the information requested in an Information Request is relevant to the Agreement;
- 17.4.3 whether, if the Information Request does relate to the Agreement, whether the information is Exempt Information;

- 17.4.4 where appropriate, whether or not in all circumstances of the case the public interest in maintaining any exemption outweighs the public interest in disclosing the requested information ; and
- 17.4.5 whether the information requested in the Information Request is to be disclosed or not, or proactively disclosed regardless of whether an Information Request has been received or not.
- 17.5 Where an Authority receives an Information Request for information about the Agreement which may be Exempt Information and which refers to one or more of the Authorities, then where reasonably practicable and, subject to **clause 17.6** take reasonable steps prior to disclosure of such information to:
- 17.5.1 circulate the Information Request to the other Authorities and invite the other Authorities to make representations to the Authority which received the Information Request as to whether or not the information is Exempt Information as soon as reasonably possible, ensuring that such submissions are made in good time so as to enable the Authority which received the Information Request to comply with their obligations under the FOI Legislation; and
- 17.5.2 in good faith, consider any representations raised by the other Authorities when deciding whether to disclose Exempt Information, but the Authority which receives the Information Request shall not be obliged to accept or agree to the representations which are made by the other Authorities.
- 17.6 The Authorities acknowledge that (notwithstanding the provisions of this **clause 17**) the Authority which received the Information Request may, under the FOI Legislation or acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOI Legislation to disclose information concerning this Agreement or the other Authorities:
- 17.6.1 in certain circumstances without consulting with the other Authorities; or
- 17.6.2 following consultation with the other Authorities and having taken their views into account,
- provided always that where **clause 17.5.1** above applies the Authority which receives the Information Request, take reasonable steps wherever practicable to draw this to the attention of the other Authorities prior to any disclosure.
- 17.7 The Authorities acknowledge and agree that an Authority will not be liable to the other Authority for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.
18. **EQUAL OPPORTUNITIES**
- 18.1 Each of the Authorities is subject to public law duties under the Equality Act 2010 and agrees to operate the Agreement in such a way as to promote equality of opportunity, good race relations and to prevent unlawful discrimination on the grounds of race, disability, gender, age, religion or belief, and sexual orientation.
19. **RELATIONSHIP OF AUTHORITIES**
- 19.1 Each of the Authorities is an independent local authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Authorities of partnership or principal/agent or of employer/employee. No Authority shall have any right or authority to act on behalf of any other Authority nor to bind another Authority by contract or otherwise except to the extent expressly permitted by the terms of this Agreement or the Shareholders' Agreement.



20. **COUNTERPARTS**

20.1 This Agreement may be executed in any number of counterparts, each of which will constitute an original but which will together constitute one agreement.

21. **SEVERANCE**

21.1 If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect. In this event the parties will agree a valid and enforceable term to replace the severed term which, to the maximum extent possible, achieves the parties' original commercial intention and has the same economic effect as the severed term.

22. **RIGHTS OF THIRD PARTIES**

22.1 The Authorities do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any third party.

23. **GOVERNING LAW**

23.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

24. **JURISDICTION**

24.1 Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

This document is executed as a **deed** and **delivered** on the date stated at the beginning of this Agreement.

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**BEDFORD BOROUGH COUNCIL**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**CUMBRIA COUNTY COUNCIL**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**THE COUNTY COUNCIL OF DURHAM**

in the presence of:

**Authorised Sealing Officer  
(A permanent Officer of Durham)**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**THE EAST RIDING OF YORKSHIRE COUNCIL**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**LINCOLNSHIRE COUNTY AUTHORITY**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**MIDDLESBROUGH BOROUGH COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**NORTH YORKSHIRE COUNTY COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**THE COUNCIL OF THE BOROUGH  
OF SOUTH TYNESIDE**

in the presence of:

**Mayor / Authorised Signatory**

**Corporate Lead Legal and Governance / Authorised Signatory**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**SOUTH YORKSHIRE PENSIONS AUTHORITY**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**SURREY COUNTY COUNCIL**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**WARWICKSHIRE COUNTY COUNCIL**

in the presence of:

**Authorised Officer**

## **SCHEDULE 1**

### **TERMS OF REFERENCE OF THE JOINT COMMITTEE**

- 1 The primary purpose of the Joint Committee is to exercise oversight over the investment performance of the collective investment vehicles operated by BCPP.
- 2 The Joint Committee will provide effective engagement with the Authorities as the investment vehicles are established and ultimately operated by BCPP. It will encourage best practice, operate on the basis that all partners have an equal say and promote transparency and accountability to each Authority.
- 3 The remit of the Joint Committee is:
  - 3.1.1 To provide support and guidance to the work being undertaken by the Officer Operations Group.
  - 3.1.2 To consider issues and provide feedback on relevant proposals as they are developed, ensuring effective engagement with the Authorities to scrutinise and monitor project management arrangements and proposals for the appointment of advisers by the Authorities.
  - 3.1.3 To formulate processes and policies for appointment and termination of membership to the Joint Committee.
  - 3.1.4 To facilitate the adoption by the Authorities of relevant contracts and policies.
  - 3.1.5 To review and comment on requests for the creation of investment propositions and to make recommendations to BCPP as to the creation of additional investment propositions.
  - 3.1.6 To review and comment from time to time on the range of investment propositions offered and the winding up and transfer of investment propositions.
  - 3.1.7 To formulate and propose any common voting policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.
  - 3.1.8 To formulate and propose any common ESG/RI policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.
  - 3.1.9 To formulate and propose any common conflicts policy for adoption by the Authorities.
  - 3.1.10 To review and comment on each individual Authority's high level transition plans for the transfer of assets to the vehicles established and operated by BCPP in accordance with the Shared Objectives.
  - 3.1.11 To oversee performance of the vehicles established and operated by BCPP as a whole and individual investment propositions by receiving reports from BCPP and taking advice from the Officer Operations Group on those reports along with any external investment advice that it deems necessary.

3.1.12 To procure and employ, through an Authority, any professional advisor that the Joint Committee deems necessary to secure the proper performance of their duties.

## **SCHEDULE 2**

### **CONSTITUTION OF THE JOINT COMMITTEE**

- 1 The Joint Committee shall consist of one elected member appointed by each Authority. The member so appointed must at all times during the appointment, be a member of the committee or sub-committee of that Authority which discharges the functions of that Authority with respect to pensions.
- 2 Each Authority may appoint a named substitute. Any named substitute must meet the eligibility requirements in paragraph 1. The substitute may attend any meeting of the Joint Committee or any of its sub-committees in place of that authority's principal member if prior written notice that the substitute will attend is given to the Secretary by the Authority concerned.
- 3 Where a substitution notice is in effect with respect to a particular member at a particular meeting, the substitute shall be a full member of the Joint Committee for the duration of the meeting in place of the principal member.
- 4 Each Authority may remove its appointed member and appoint a different member by giving written notice to the Secretary.
- 5 Each appointed member shall be entitled to remain on the Joint Committee for so long as the Authority appointing him or her so wishes, but shall cease to be a member if he or she ceases to be a member of the appointing Authority or if that Authority removes the appointed member.
- 6 Any casual vacancies will be filled as soon as reasonably practicable by the Authority from which such vacancy arises by giving written notice to the Secretary to the Joint Committee or his or her nominee.
- 7 Each member of the Joint Committee shall comply with any relevant code of conduct of his or her Authority when acting as a member of the Joint Committee.
- 8 The Joint Committee may co-opt such other persons as it sees fit to be members of the Joint Committee but without power to vote.

#### **Proceedings**

- 9 Time and Place of Meetings

The Joint Committee will meet at least once each year and further as may be required. All meetings of the Joint Committee will take place at a suitable venue and at a time to be agreed by the Joint Committee.

- 10 Notice of and Summons to Meetings

The Secretary will give notice to the public of the time and place of any meeting in accordance with Part VA of the Local Government Act 1972. At least five Business Days before a meeting, the Secretary will send a summons by post or email to every member or make arrangements for it to be left at his or her usual office. The summons will give the date, time and place of each meeting and specify the

business to be transacted, and will be accompanied by such reports as are available.

## 11 Chair and Vice Chair of Joint Committee

11.1 The Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Chair shall hold that office until another member is appointed. The appointment of the Chair shall take place every two years, beginning with the Commencement Date with subsequent appointments falling not later than the first meeting of the Joint Committee following the start of the relevant municipal year. The Chair shall be permitted to serve for a maximum of two terms.

11.2 The Vice-Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Vice-Chair shall hold that office until another member is appointed. The appointment of the Vice-Chair shall take place every two years, beginning with the Commencement Date with subsequent appointments falling not later than the first meeting of the Joint Committee following the start of the relevant municipal year. The Vice-Chair shall be permitted to serve for a maximum of two terms.

11.3 If there is a quorum of members present but neither the Chair nor the Vice-Chair is present at a meeting of the Joint Committee, the other members of the Joint Committee shall choose one of the members of the Joint Committee to preside at the meeting.

## 12 Quorum

The quorum of a meeting will be at least 60% of members who are entitled to attend and vote.

## 13 Voting

### 13.1 Majority

Each member of the Joint Committee shall have one vote. Any matter will be decided by a simple majority of those members of the Joint committee present in the room at the time the question is put.

### 13.2 By Substitutes

Any person appointed as a substitute shall have the same voting rights as the member of the Joint Committee for whom he or she is substituting. Where notice of substitution has been given for a particular meeting the principal member may not vote unless the notice of substitution is withdrawn in writing before the start of the meeting.

### 13.3 Show of hands

The Chair will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

## 14 Minutes

The Secretary shall arrange for written minutes to be taken at each meeting of the Joint Committee and shall present them to the Joint Committee at its next meeting for approval as a correct record. At the next meeting of the Joint Committee, the Chair shall move that



the minutes of the previous meeting be signed as a correct record. If this is agreed, the Chair shall sign the minutes. The only part of the minutes that can be discussed is their accuracy.

## 15 Public Access

Meetings of the Joint Committee shall be open for members of the public to attend unless the Joint Committee determines that it is necessary to exclude members of the public in accordance with Part VA of the Local Government Act 1972 or the Joint Committee determines that it is necessary to close the meeting to the public because of a disturbance. Copies of the agenda for meetings of the Joint Committee and any reports for its meetings shall be open to inspection by members of the public at the offices of the Authorities with the exception of any report which the Secretary determines relates to items which in his or her opinion are likely to be considered at a time when the meeting is not to be open to the public.

### 15.1 Disturbance by member of the public

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If that person continues to interrupt, the Chair will arrange for their removal from the meeting room and will suspend the meeting until the member of the public has left or been removed.

### 15.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.

## 16 Overview and Scrutiny

The Joint Committee and the Host Authority will co-operate with reasonable requests for information from any of the Authorities' overview and scrutiny committees.

## 17 Regulation of Business

17.1 Any ruling given by the Chair as to the interpretation of this constitution with respect to the regulation of proceedings at meeting shall be final.

17.2 Subject to the law, the provisions of this Constitution and the terms of any contract, the Joint Committee may decide how it discharges its business.

## 18 Urgent Business

18.1 In cases of urgency, the Host Authority, in consultation with the Chair and Vice Chair, may take decisions on behalf of the Joint Committee.

18.2 As far as reasonably practicable, the Host Authority shall communicate the intention to exercise the decision-making power under paragraph 18.1 to the other Authorities before the decision is made.

18.3 Any decisions taken under paragraph 18.1 will be reported at the next meeting of the Joint Committee together with an explanation of the need for urgency in the decision-making process.

## SCHEDULE 3

### TERMS OF REFERENCE FOR THE OFFICER OPERATIONS GROUP

- 1 The Officer Operations Group is a working group of officers appointed by the Authorities whose role is to provide a central resource for advice, assistance, guidance and support for the Joint Committee (and also if requested for the Authorities as a collective group of investors through BCPP).
- 2 The Officer Operations Group shall work with the Joint Committee to support the functions of the Joint Committee as set out in the Joint Committee's Terms of Reference.
- 3 The Officer Operations Group shall provide technical support at meetings of the Joint Committee, for example by approving and delivering performance management reports for the Joint Committee on all aspects relating to the provision of services by BCPP.
- 4 The Officer Operations Group shall act as a conduit for the BCPP Joint Committee to communicate back to the respective Authorities and/or direct to BCPP as appropriate.
- 5 The Officer Operations Group shall operate in accordance with the shared objectives of the Authorities as set out at **Schedule 4** and within any budget set by the Authorities.

## **SCHEDULE 4**

### **SHARED OBJECTIVES**

- 1 To provide to the authorities a compliant and effective means of meeting the Government's requirement for the pooling of LGPS funds and thereby to achieve scale, improve governance, enhance capability and capacity to deliver infrastructure investment and fees savings and to comply with any current and future governance requirements placed on the investment function of LGPS administering authorities.
- 2 To operate with a common or like-minded responsible investor/shareholder voting policy which focuses on securing high levels of corporate governance by the companies invested in.
- 3 To share legal ownership, control and decisive influence over BCPP and to allocate the associated costs of operating BCPP between the Authorities in an equitable manner.
- 4 Following the transitioning of assets to BCPP, the Authorities shall primarily but not exclusively invest their LGPS pension fund assets either through the collective investment vehicle(s) operated by BCPP, as the primary and exclusive collective investment vehicle(s) for all eligible fund assets, or by appointing BCPP to manage any non-eligible pension assets outside of such vehicle(s).

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**Dated:** **2023**

- (1) BEDFORD BOROUGH COUNCIL
- (2) CUMBRIA COUNTY COUNCIL
- (3) DURHAM COUNTY COUNCIL
- (4) THE EAST RIDING OF YORKSHIRE COUNCIL
- (5) LINCOLNSHIRE COUNTY COUNCIL
- (6) MIDDLESBROUGH BOROUGH COUNCIL
- (7) NORTH YORKSHIRE COUNTY COUNCIL
- (8) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE
- (9) SOUTH YORKSHIRE PENSIONS AUTHORITY
- (10) SURREY COUNTY COUNCIL
- (11) WARWICKSHIRE COUNTY COUNCIL
- (12) BORDER TO COAST PENSIONS PARTNERSHIP LIMITED

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**Shareholders' Agreement in respect of Border to Coast Pensions Partnership Limited**

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**BETWEEN**

- (1) **Bedford Borough Council**, of Borough Hall, Cauldwell Street, Bedford, MK42 9AP;
- (2) **Cumbria County Council**, of 117 Botchergate, Carlisle, CA1 1RD;
- (3) **Durham County Council**, of County Hall, Durham, DH1 5UE;
- (4) **The East Riding Of Yorkshire Council**, of County Hall, Beverley HU17 9BA;
- (5) **Lincolnshire County Council**, of County Offices, Newland, Lincoln, LN1 1YL;
- (6) **Middlesbrough Borough Council**, of Fountain Court, 119 Grange Road, Middlesbrough, TS1 2DT;
- (7) **North Yorkshire County Council**, of County Hall, Northallerton, North Yorkshire, DL7 8AL;
- (8) **The Council of the Borough of South Tyneside**, of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL;
- (9) **South Yorkshire Pensions Authority**, of Oakwell House, 2 Beevor Court, Pontefract Road, Barnsley, South Yorkshire, S71 1HG;
- (10) **Surrey County Council**, of Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF;
- (11) **Warwickshire County Council**, of PO Box 3, Shire Hall, Warwick, CV34 4RL; and
- (12) **Border to Coast Pensions Partnership Limited**, a company incorporated in England and Wales (registered number 10795539) whose registered office is at 5<sup>th</sup> Floor Toronto Square, Leeds, England, LS1 2HJ ("**BCPP**" or "**the Company**").

**BACKGROUND**

- (A) The Shareholders together are each administering authorities within the LGPS and within the meaning of the Local Government Pension Scheme Regulations 2013. They each administer, maintain and invest their own respective funds within the LGPS in accordance with those Regulations and the Investment Regulations.
- (B) BCPP was formed as an entity to act as an alternative investment fund manager to run and operate one or more collective investment vehicles to allow the administering authorities to pool some or all of their respective LGPS investments and any other authorised investment activities of the pool.
- (C) The Shareholders are the sole shareholders in BCPP and with Northumberland County Council entered into the Original Agreement to record the terms of their relationship with each other in relation to BCPP and to regulate certain aspects of their affairs and dealings with BCPP. Northumberland County Council ceased to be a shareholder in October 2020 and its shares were purchased by BCPP in accordance with the terms of the Original Agreement.
- (D) Clause 24 of the Original Agreement permits the Parties to amend the terms of that agreement in writing. The Original Agreement was amended by the Shareholders and BCPP by a Supplemental Agreement dated 6 October 2020 (the "**Supplemental Agreement**") in accordance with clause 24.
- (E) Following a review of the governance arrangements for BCPP the Shareholders and BCPP agree that certain changes to the Original Agreement are needed. The Parties are therefore entering into this Agreement to amend and restate the Original Agreement.



- (F) BCPP has agreed with the Shareholders that it will comply with the terms and conditions of this Agreement insofar as they relate to BCPP.
- (G) BCPP and the Shareholders have agreed that they will comply with the Local Authorities (Companies) Order 1995 (and any supplemental or replacement legislation related thereto) in so far as it relates to BCPP.

## 1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following words and expressions have the following meanings unless the context otherwise requires:

<b>"2006 Act"</b>	the Companies Act 2006 (as amended from time to time)
<b>"A List Reserved Matter"</b>	the reserved matters set out in <b>Part A of Schedule 1</b> (being unanimous reserved matters)
<b>"A Shares"</b>	the A ordinary shares of £1.00 each in the capital of BCPP having the rights set out in the Articles
<b>"Additional Capital Liability"</b>	an unbudgeted expense or liability which the Company is required to pay as a result of activities carried out in its capacity as an authorised alternative investment fund manager under the rules of the FCA or an operator of an unregulated collective investment scheme
<b>"Adequate Procedures"</b>	in respect of the relevant party, adequate procedures designed to prevent persons associated with it from undertaking conduct causing it to be guilty of an offence under section 7 Bribery Act and which comply with the guidance published under section 9 Bribery Act
<b>"Annual Budget"</b>	a budget in a form to be prepared and adopted pursuant to <b>clause 6</b> in respect of BCPP for each year
<b>"Annual Operating Charge"</b>	the meaning given to it in <b>clause 4.1</b>
<b>"Anti-Bribery Laws"</b>	any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws, any common law, judgment, demand, order or decision of any court, regulator or tribunal which relate to anti-bribery and/or anti-corruption including the Bribery Act
<b>"Anti-Corruption Policy"</b>	an anti-corruption policy of BCPP requiring BCPP and its officers, employees, agents and any other person who performs services for or on its behalf to comply with the Anti-Bribery Laws
<b>"Articles"</b>	the Articles of Association of BCPP amended from time to time in accordance with the terms of this Agreement
<b>"B List Reserved Matter"</b>	the reserved matters set out in <b>Part B of Schedule 1</b> (being Shareholder Majority reserved matters)

<b>"B Shares"</b>	the B ordinary shares of £1.00 each in the capital of BCPP having the rights set out in the Articles
<b>"Board"</b>	the board of directors of BCPP from time to time
<b>"Bribery Act"</b>	the Bribery Act 2010
<b>"Business"</b>	the meaning given to it in <b>clause 3.1</b>
<b>"Business Day"</b>	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
<b>"Capital Contribution Letter"</b>	a letter making a capital contribution in the form set out in <b>Schedule 5</b>
<b>"Chief Executive"</b>	the office of (or person appointed to the office of as the context requires) chief executive of BCPP
<b>"Confidential Information"</b>	the meaning given to it in <b>clause 14.2.1</b>
<b>"Contributory Amount"</b>	the meaning given to it in <b>clause 4.14.1</b>
<b>"Control"</b>	in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and <b>"Controls"</b> and <b>"Controlled"</b> will be construed accordingly
<b>"Costs"</b>	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement
<b>"CRR"</b>	the European Union Credit Requirements Regulation 575/2013 and such law, regulation or other enactment which may replace it or give effect to it in the United Kingdom upon an exit of the United Kingdom from the European Union
<b>"Deadlock Date"</b>	the date of service of a Deadlock Notice by any Shareholder on BCPP and the other Shareholder(s)
<b>"Deadlock Notice"</b>	a written notice confirming that a Deadlock Situation has arisen
<b>"Deadlock Situation"</b>	the meaning given to it in <b>clause 11.1</b>
<b>"Discloser"</b>	the meaning given to it in <b>clause 14.2.1.1</b>
<b>"Dispute Notice"</b>	a written notice confirming that a Shareholder believes that a dispute has arisen in accordance with <b>clause 12</b>
<b>"Due Date"</b>	the meaning given to it in <b>clause 4.14.2</b>
<b>"EIR"</b>	the Environmental Information Regulations 2004 and any subordinate legislation made under it, any amendment or re-enactment of any of them, all as amended, supplemented and/or replaced from time to time
<b>"Encumbrance"</b>	any mortgage, charge, pledge, lien, assignment, option, restriction, claim, right of pre-emption, right

	of first refusal, third party right or interest, other encumbrance or security interest of any kind or other type of preferential arrangement (including a title transfer or retention arrangement) having similar effect
<b>"Exiting Shareholder"</b>	the meaning given to it in <b>clause 15.2.2</b>
<b>"FCA"</b>	Financial Conduct Authority or any replacement body
<b>"Fair Market Value"</b>	the fair market value of any Share agreed between the Board and any Shareholder or, in the event of any dispute, as determined by the auditors of BCPP (or if they are unwilling to act, by an independent accountant nominated by the Board and the relevant Shareholder(s) (or, in default of which, by the President of the Institute of Chartered Accountants in England and Wales))
<b>"Financial Year"</b>	the period of twelve months ending on 31 March and each successive accounting reference period of BCPP as determined by section 391 of the Companies Act 2006
<b>"FOIA"</b>	the Freedom of Information Act 2000, all regulations made under it and any subordinate legislation made under them, any amendment or re-enactment of any of them, all as amended, supplemented and/or replaced from time to time
<b>"FOIA Legislation"</b>	the FOIA and/or the EIR (as applicable)
<b>"Group Companies"</b>	in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time
<b>"Inter Authority Agreement"</b>	the agreement between the Shareholders to cooperate in the pooling of LGPS investments dated 6 June 2017 as updated or amended from time to time
<b>"Investment Regulations"</b>	The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016
<b>"LGPS"</b>	the Local Government Pension Scheme in England and Wales
<b>"Major Unbudgeted Expense Adjustment"</b>	an Additional Capital Liability which is more than the Company's Regulatory Capital Requirements but less than the lower of (i) the amount which is 4 times the Company's Regulatory Capital Requirements; or (ii) £60,000,000
<b>"Original Agreement"</b>	the legal agreement dated 12 July 2017 between the Shareholders and BCPP relating to the relationships between the Shareholders in respect of BCPP and also to regulate certain aspects of the Shareholders' dealings with BCPP
<b>"Payment Date"</b>	the meaning given to it in <b>clause 4.3</b>

<b>"Permitted Transferee"</b>	another LGPS administering authority admitted as a new Shareholder in accordance with <b>clause 19</b>
<b>"Procurement Legislation"</b>	Directive 2014/24/EU of the European Parliament and of the Council and any legislation implementing this Directive in the UK (as amended from time to time) which at the date of this Agreement shall be the Public Contracts Regulations 2015
<b>"Purpose" or "Purposes"</b>	the meaning given to them in <b>clause 14.2.2.2</b>
<b>"Recipient"</b>	the meaning given to it in <b>clause 14.2.1.1</b>
<b>"Regulatory Capital Requirements"</b>	the requirements under Article 9 of the Alternative Investment Fund Managers Directive 20011/61/EU as amplified or implemented EU Regulation 231/2013 and any relevant other European Union or United Kingdom instrument
<b>"Regulatory Capital Statement"</b>	the statement issued by BCPP to determine whether BCPP satisfies Regulatory Capital Requirements
<b>"Related Agreements"</b>	<p>the following documents:</p> <ul style="list-style-type: none"> <li>(a) Articles</li> <li>(b) Inter Authority Agreement</li> </ul> <p>and any other agreements entered into between BCPP and all of the Shareholders before the date of this Agreement</p>
<b>"Representatives"</b>	in respect of a party, that party's Group Companies and its and their officers, directors, employees, consultants and professional advisers; and <b>"Representative"</b> means any of them
<b>"Request for Information"</b>	a request for information to which the FOIA Legislation applies, where the information requested consists of or includes Confidential Information of a party to this Agreement
<b>"Request Recipient"</b>	a party that receives a Request for Information
<b>"Section 151 Officer"</b>	the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972
<b>"Serious Unbudgeted Expense Adjustment"</b>	an Additional Capital Liability which is equal to or more than £60,000,000 or, if lower, the amount which is 4 times the Company's Regulatory Capital Requirements
<b>"Shared Objectives"</b>	the objectives set out in <b>Schedule 2</b>
<b>"Shareholder Majority"</b>	the holders of 66.6% or more of the A Shares from time to time

<b>"Shareholder Reserved Matters"</b>	the A List Reserved Matters and the B List Reserved Matters
<b>"Shareholders"</b>	any holder of Shares and <b>"Shareholder"</b> will mean any of them
<b>"Shares"</b>	shares in the capital of BCPP and <b>"Share"</b> will be construed accordingly
<b>"Statutes"</b>	the Companies Acts as defined in section 2 of the Companies Act 2006 and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company
<b>"Strategic Plan"</b>	the annual business plan (including the Annual Budget) for BCPP prepared and approved in accordance with <b>clause 6</b> as varied from time to time in accordance with the terms of this Agreement
<b>"Subsidiary/ies"</b>	has the meaning given to it by section 1159 of the Companies Act 2006 and for the purposes of section 1159(1) a company (the first company) shall be treated as a member of another company if: <ul style="list-style-type: none"> <li>(a) any of its subsidiaries is a member of that other company; or</li> <li>(b) any shares in that other company are held by a person acting on behalf of the first company or any of its subsidiaries; or</li> <li>(c) any shares in that other company are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares by the first company</li> </ul>
<b>"Termination Date"</b>	the date of termination of this Agreement under <b>clause 17</b>
<b>"Unbudgeted Expense Adjustment"</b>	an Additional Capital Liability which is of an amount which is equal to or less than the Company's Regulatory Capital Requirements
<b>"Unbudgeted Expense Adjustment Statement"</b>	the meaning given to it in <b>clause 4.14</b>
<b>"Withdrawal Date"</b>	the meaning given to it in <b>clause 15.2.1</b>
1.2	references to the background section, clauses and Schedules are to the background section and clauses of and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
1.3	the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
1.4	the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
1.5	unless the context otherwise requires:

- 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
- 1.5.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.7 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.9 references to "in writing" or "written" are to communication effected by post and email or any other means of reproducing words in a legible and non-transitory form (but not fax);
- 1.10 any reference to a document being in the "agreed form" will mean that document in the form and content agreed by the parties and, for the purposes of identification, initialled by or on behalf of each party;
- 1.11 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and
- 1.12 unless expressly stated otherwise, all obligations, representations and warranties on the part of two or more persons are (unless stated otherwise) entered into, given or made by such persons severally.

## 2. **AMENDMENT AND RESTATEMENT OF THE ORIGINAL AGREEMENT**

- 2.1 The Original Agreement is hereby amended and restated on the terms of this Agreement with effect from the Commencement Date and is a continuation of the Original Agreement.
- 2.2 The Original Agreement shall remain in full force and effect for any issues arising which pre-date the date of this Agreement and be interpreted on the terms of the Original Agreement. This Agreement does not release any party to it from any breaches of the Original Agreement existing at the date of this Agreement or affect any existing rights that have accrued under the Original Agreement prior to the date of this Agreement.

## 3. **BUSINESS OF BCPP**

- 3.1 The parties agree that the business of BCPP shall be (unless and until otherwise determined in accordance with this Agreement) acting as an alternative investment fund manager to run and operate one or more collective investment vehicles or supervise and provide advice in relation to such investments in order to provide a collaborative platform through which the Shareholders can aggregate their LGPS investments (the "**Business**").
- 3.2 BCPP will conduct the Business in accordance with:
  - 3.2.1 the then current Strategic Plan;
  - 3.2.2 the Shared Objectives; and

3.2.3 applicable law.

#### 4. **FINANCE AND REGULATORY CAPITAL**

4.1 Each Shareholder shall pay an annual operating charge to BCPP in the amount specified in the Annual Budget in relation to services provided by BCPP as specified in the Annual Budget ("**Annual Operating Charge**").

4.2 Each Shareholder shall be required to make a contribution to BCPP's Regulatory Capital Requirements by way of a subscription for B Shares:

4.2.1 in accordance with the Regulatory Capital Statement which will be issued annually by BCPP and approved in writing by all of the Shareholders;

4.2.2 at such other times as the directors reasonably determine that additional regulatory capital is required by BCPP and notify each of the Shareholders in writing accordingly (including, without limitation, at such times as the Shareholders unanimously approve any the admission of a new shareholder in accordance with **clause 18** and pursuant to the notice of withdrawal of an Existing Shareholder as described in **clause 4.2.3** below) (such notice being an "**Additional Regulatory Capital Statement**").

4.2.3 If any Shareholder (an "**Exiting Shareholder**") ceases to hold any A Shares (at which time any B Shares held by that Shareholder may, at the discretion of the Board, be purchased by BCPP in accordance with and subject to the Articles and the Statutes) the following provisions shall apply. Upon a Shareholder giving notice to BCPP pursuant to the Articles and **clause 15.2.1** (at least twelve (12) months prior to any proposed withdrawal to expire on 31 March next following) that it wishes to withdraw as a Shareholder, the directors shall thereafter issue a notice in writing to each remaining Shareholder not less than six (6) months prior to the Withdrawal Date in respect of the Exiting Shareholder, notifying the remaining Shareholders that the Exiting Shareholder intends to withdraw as a Shareholder and confirming the amount of replacement regulatory capital (if any) and/or such other amount as may be required to be contributed by the remaining Shareholders in order to maintain the regulatory capital required by BCPP should it have determined that it shall purchase the B Shares held by the Exiting Shareholders, such other amount shall also be deemed to be regulatory capital for the purpose of this **clause 4** (such notice being a "**Replacement Regulatory Capital Statement**").

4.3 Each Shareholder shall be liable to make an equal contribution (such equal amount payable by each Shareholder being that Shareholder's "**Relevant Share**" of such capital requirement) in respect of any Regulatory Capital Requirement which is specified in a Regulatory Capital Statement, Additional Regulatory Capital Statement or Replacement Regulatory Capital Statement (as the case may be) (each such statement being a "**Statement**" for the purposes of this **clause 4**), which contribution shall be satisfied by way of a subscription by such Shareholder for such number of B Shares, at par value, as is equal to that Shareholder's Relevant Share. Each Statement shall specify the date (the "**Payment Date**") by which the subscription monies must be paid to BCPP by the Shareholders.

4.4 Following receipt of a Statement, each Shareholder shall advance to BCPP its Relevant Share of the Regulatory Capital Requirement specified therein, on or before the specified Payment Date. Upon receipt of payment, BCPP shall issue the requisite number of B Shares to each such Shareholder.

4.5 If any of the Shareholders (for this purpose, a "**Failing Shareholder**") fails to pay its Relevant Share of any Regulatory Capital Requirement on or before the relevant Payment Date (and without prejudice to any right to bring proceedings against the Failing Shareholder in relation to such failure) then, without prejudice to **clause 16 (consequences of breach)**:

- 4.5.1 BCPP shall notify the other Shareholders (each, a "**Non-Failing Shareholder**") in writing as soon as practicable and the Non-Failing Shareholders shall be bound to advance the Failing Shareholder's Relevant Share, in equal shares, by way of subscriptions for further B Shares in accordance with this **clause 4**, within seven days of receipt of such notice from BCPP.
- 4.5.2 If the Failing Shareholder within 20 days of a notice in writing from the directors of non-payment contributes its Relevant Share of the Regulatory Capital Requirement (its "**Repayment Amount**") BCPP may (if the other Shareholders (or any of them) have previously satisfied the Failing Shareholder's contribution pursuant to **clause 4.5.1**) purchase the Non-Failing Shareholders' B Shares subscribed for pursuant to this **clause 4.5.2** in accordance with **Article 27** of the Articles (and the Failing Shareholder shall execute such documents and do such things as may be reasonably requested by the Company to effect such purchase) and reimburse such Non-Failing Shareholder(s) for subscriptions paid under **clause 4.5.1** promptly (and for this purpose each Shareholder shall be deemed to have given its prior written consent to such redemption by virtue of entering into this Agreement).
- 4.5.3 Any Failing Shareholder's voting rights in relation to its A Shares shall be immediately suspended (except in relation to resolutions to amend either (i) the Articles; (ii) any rights attaching to the class of Shares held by the Failing Shareholder; or (iii) any of the A List Reserved Matters), and the vote of the Failing Shareholder shall not be required in relation to the approval of any A List Reserved Matter (other than altering any provisions of the Articles or altering any of the rights attaching to the Shares in accordance with paragraph 12 of the A List Reserved Matters) or B List Reserved Matter, until such time as the Failing Shareholder has subscribed for its B Shares in BCPP and paid its Relevant Share of the Regulatory Capital Requirement, at which time the restrictions set out in this **clause 4.5.3** shall cease to apply.
- 4.5.4 All dividends and distributions to which the Failing Shareholder would otherwise have been entitled under this Agreement or the Articles (up to a maximum aggregate amount equal to the Repayment Amount) shall be applied in purchasing the B Shares subscribed for by the Non-Failing Shareholders pursuant to **clause 4.5.1** (pro rata to their contribution to the Repayment Amount).
- 4.5.5 For the avoidance of doubt, if a Failing Shareholder contributes its Repayment Amount in accordance with **clause 4.5.2**, the provisions of **clauses 4.5.3** and **4.5.4** shall not apply.
- 4.6 If BCPP requires additional funds or financial support from the Shareholders other than as explicitly provided for in this **clause 4**, no Shareholder shall seek to agree terms with BCPP in relation to such matter which differ from those on which any other Shareholder is providing equivalent finance or support.
- 4.7 The Shareholders agree that, subject to **clauses 4.8** and **4.9**, the aggregate amount of any actual liability incurred by any or all of them pursuant to any guarantee or indemnity given by any or all of them to any third party in respect of any liabilities or obligations of BCPP, or pursuant to any sole or several guarantee or indemnity given in respect of such obligations or liabilities by any of them with the consent in writing of the others, shall be borne by them in equal proportions and each shall indemnify and keep indemnified the others accordingly. Subject to **clause 4.8**, no Shareholder shall be obliged to provide any guarantee in respect of any liabilities or obligations of BCPP unless the Shareholders have given their unanimous approval to the Shareholders providing such guarantees on the terms of this **clause 4.7**. For the avoidance of doubt, this **clause 4.7** shall not apply to any obligations related to BCPP's Regulatory Capital Requirements.
- 4.8 Where any Shareholders combine and sell any Shares back to BCPP pursuant to **clause 15.1.3**, any such newly combined entity shall assume any and all of the aggregate liabilities of its original component separate entities in relation to this Agreement.



- 4.9 Save as set out in **clauses 4.1 to 4.5** there shall be no obligation upon the Shareholders to subscribe for Shares in BCPP or to provide, or procure to be provided, to BCPP loans or loan facilities.
- 4.10 The Shareholders agree that BCPP, acting by the directors, shall have the power to seek funding by way of borrowings on behalf of BCPP from any third party commercial lender, provided that:
- 4.10.1 the directors seek to obtain any such funding on the most favourable terms reasonably available as to interest, repayment and security;
  - 4.10.2 no prospective lender shall be allowed a right to participate in the equity share capital of BCPP as a condition of any such loan;
  - 4.10.3 no prospective lender shall be allowed to take any Encumbrance over any of the Shares; and
  - 4.10.4 any third party loan(s) in excess of £5,000,000 shall require prior approval from all of the Shareholders (in accordance with **Schedule 1, Part A**).

#### **Capital Contribution Calls**

- 4.11 BCPP shall be entitled, but not obliged, to require each Shareholder and each Shareholder shall be required to make a payment to BCPP at such times as the directors reasonably determine that BCPP is required to satisfy any Additional Capital Liability.
- 4.12 BCPP shall notify each of the Shareholders in writing (including, without limitation, any Shareholder admitted in accordance with **Clause 19**) as soon as reasonably practicable following BCPP becoming aware of a potential Additional Capital Liability. BCPP shall continue to provide material information to Shareholders as to liability and quantum of the potential Additional Capital Liability until it has confirmed the amount of the Additional Capital Liability, in conjunction with the FCA or auditors if applicable.
- 4.13 If there is a Major Unbudgeted Expense Adjustment, then the Company shall issue a draft Unbudgeted Expense Adjustment Statement which must be approved by a Shareholder Majority in a meeting of the Shareholders or by way of a written resolution prior to the Company issuing a final Unbudgeted Expense Adjustment Statement and Shareholders being obliged to fund the Major Unbudgeted Expense Adjustment in accordance with **clause 4.15**. The Shareholders undertake to procure that any such Shareholder meeting or written resolution is held or returned to the Company (as the case may be) within 21 days of the Company issuing the draft Unbudgeted Expense Adjustment Statement and any failure of a Shareholder to comply with such timeframe shall result in that Shareholder being deemed to have approved the draft Unbudgeted Expense Adjustment Statement.
- 4.14 Subject to **clauses 4.11** and 4.13 above, BCPP shall issue a written notice to each Shareholder confirming the amount of the Additional Capital Liability promptly following confirmation and/or agreement with the FCA or confirmation from the auditors (where relevant) of the same (such notice being an "**Unbudgeted Expense Adjustment Statement**"). Each Unbudgeted Expense Adjustment Statement shall:
- 4.14.1 specify the proportionate amount each Shareholder is liable to pay which shall be calculated by taking the amount of the Additional Capital Liability and dividing that amount by the number of Shareholders (the "**Contributory Amount**");
  - 4.14.2 specify the date (the "**Due Date**") by which the Contributory Amount must be paid to BCPP by each Shareholder and this date shall not be less than 10 Business Days from the date of the Unbudgeted Expense Adjustment Statement; and
  - 4.14.3 include the total amount of the Additional Capital Liability.

- 4.15 Following receipt of an Unbudgeted Expense Adjustment Statement, each Shareholder shall advance to BCPP its Contributory Amount on or before the specified Due Date and deliver a signed Capital Contribution Letter for the amount of the Contributory Amount. For the avoidance of doubt, the Company shall not require prior consent to issuing an Unbudgeted Expense Adjustment Statement in respect of an Unbudgeted Expense Adjustment.
- 4.16 BCPP shall only use the monies received for settling an Additional Capital Liability.
- 4.17 If any of the Shareholders (for this purpose, a "**Breaching Shareholder**") fails to pay its Contributory Amount of any Additional Capital Liability on or before the relevant Due Date (and without prejudice to any right to bring proceedings against the Breaching Shareholder in relation to such failure) then:
- 4.17.1 BCPP shall notify the other Shareholders (each, a "**Non-Breaching Shareholder**") in writing as soon as practicable and the Non-Breaching Shareholders shall be bound to advance the Breaching Shareholder's Contributory Amount, in equal shares, by way of payments in cash within 10 Business Days of receipt of such notice from BCPP;
- 4.17.2 if the Breaching Shareholder within 15 Business Days of a notice in writing from BCPP of non-payment contributes its Contributory Amount of the Additional Capital Liability (its "**Settlement Amount**") BCPP shall (if the other Shareholders (or any of them) have previously satisfied the Breaching Shareholder's contribution pursuant to **clause 4.17.1**) promptly repay the Non-Breaching Shareholders for any amount which they may have paid pursuant to **clause 4.17.1**;
- 4.17.3 (subject to **clause 4.17.2**) any Breaching Shareholder's voting rights in relation to its A Shares shall be immediately suspended (except in relation to resolutions to amend either (i) the Articles; (ii) any rights attaching to the class of Shares held by the Breaching Shareholder; or (iii) any of the A List Reserved Matters under the Shareholders' Agreement), and the vote of the Breaching Shareholder shall not be required in relation to the approval of any A List Reserved Matter (other than altering any provisions of the Articles or altering any of the rights attaching to the Shares in accordance with paragraph 12 of the A List Reserved Matters) or B List Reserved Matter under the Shareholders' Agreement, until such time as the Breaching Shareholder has paid its Contributory Amount of the Additional Capital Liability, at which time the restrictions set out in this **clause 4.17.3** shall cease to apply; and
- 4.17.4 all dividends and distributions to which the Breaching Shareholder would otherwise have been entitled under the Shareholders' Agreement or the Articles (up to a maximum aggregate amount equal to the Settlement Amount) shall be applied in repaying those payments made by the Non-Breaching Shareholders pursuant to **clause 4.17.1** (pro rata to their contribution to the Settlement Amount) in priority to the obligation in **clause 4.5.4**.
- 4.18 For the avoidance of doubt, if a Breaching Shareholder contributes its Settlement Amount in accordance with **clause 4.17.2**, the provisions of **clauses 4.17.3** and **4.17.4** shall not apply.
- 4.19 If there is a Serious Unbudgeted Expense Adjustment, the procedure set out in this **clause 4** shall apply save that reference to the 21 day time period in **clause 4.13** shall not apply and there shall be no deemed acceptance of a draft Unbudgeted Expense Adjustment Statement. The parties agree that they will consider the future of the Company and the termination provisions set out in **clause 16**.

## 5. **DIVIDEND POLICY**

### 5.1 **Reduction of Annual Operating Charge**

- 5.1.1 Subject to **clauses 5.1.3, 5.2.1 and 5.3**, the Shareholders intend that BCPP will use any profits lawfully available for distribution for that Financial Year first towards the reduction (or elimination) of the Annual Operating Charge for the next Financial Year.
- 5.1.2 Subject to **clauses 4.5, 5.2, 5.1.3, 5.2.1 and 5.3**, the Shareholders intend that BCPP will either distribute to the Shareholders by way of cash dividend in respect of each Financial Year all of its profits lawfully available for distribution for that Financial Year or, in the sole discretion of the Board, make available these distributable profits to facilitate a buyback of Shares by BCPP under **clause 15.2.3** or the Articles in the event of an Exiting Shareholder.
- 5.1.3 The Shareholders may unanimously agree in writing for any Financial Year not to make any distribution by way of cash dividend or to make a distribution of a different amount of available profits to that set out in **clause 5.1.2**.
- 5.1.4 Any distribution for a Financial Year will be made within six months of the end of that Financial Year.

### 5.2 **Prior repayment of third party indebtedness**

- 5.2.1 No distribution by way of dividend or otherwise will be made until BCPP has repaid all third party financing unless otherwise agreed by a Shareholder Majority in accordance with **clause 10** and **Schedule 1**.

### **Retentions**

- 5.3 The amount of any distribution that would otherwise be made by BCPP under **clause 5.1.2** will be reduced by an amount equal to the aggregate of:
  - 5.3.1 any amount necessary to ensure that BCPP would not otherwise be in breach or likely to be in breach of any covenant or undertaking given by BCPP to any lender in the relevant financial year following the distribution;
  - 5.3.2 any amount necessary to ensure that BCPP would not otherwise be in breach or likely to be in breach of any applicable Regulatory Capital Requirements following the distribution; and
  - 5.3.3 any amount resolved by the Board and resolved unanimously in accordance with **clause 10** and **Schedule 1** by the Shareholders as prudent to retain having regard to:
    - 5.3.3.1 the cashflow and working capital requirements of BCPP;
    - 5.3.3.2 the need to make reasonable provisions and transfers to reserves;
    - 5.3.3.3 the interests of BCPP in respect of the implementation of its Strategic Plan or its business prospects; and
    - 5.3.3.4 the future outlook and performance of the business of BCPP, including the scope to reduce the Annual Budget for future years.

## 6. **THE STRATEGIC PLAN, ANNUAL BUDGET, ADMINISTRATIVE AND ACCOUNTING MATTERS**

- 6.1 BCPP will prepare an Annual Budget which will be included within the Strategic Plan for each Financial Year in accordance with **clause 6.3**.

- 6.2 Each Annual Budget will include the following:
- 6.2.1 an estimate of the working capital requirements of BCPP incorporated within a cashflow forecast;
  - 6.2.2 a projected profit and loss account;
  - 6.2.3 an operating budget (including estimated capital expenditure requirements) and balance sheet forecast;
  - 6.2.4 a review of projected business;
  - 6.2.5 a summary of business objectives; and
  - 6.2.6 a financial report which includes an analysis of the results of BCPP and the established collective investment vehicles for the previous Financial Year compared with the Strategic Plan for that Financial Year, identifying variations in sales, revenues, costs and other material items.
- 6.3 Each Strategic Plan will be prepared by the Board in accordance with the Shared Objectives and thereafter presented to the Shareholders for comment and approval according to a timetable approved by the Board after due consultation with the Shareholders, provided that such Strategic Plan shall in any event be submitted for approval by (i) the Board not later than 60 days before the commencement of the Financial Year to which it relates and (ii) the Shareholders not later than 30 days before the commencement of the Financial Year to which it relates. The Strategic Plan will be updated when approved in accordance with **clause 10.7.1**.
- 6.4 If any Strategic Plan is not approved in accordance with **clause 6.3** before the end of the preceding Financial Year then until it is approved the business of BCPP will continue to be run in accordance with the Strategic Plan for that preceding Financial Year and the Annual Budget in respect of the immediately preceding Financial Year shall apply, increased by the Retail Price Index as published by the United Kingdom Office for National Statistics in September of the previous Financial Year (the "**RPI**"). In the event that the RPI is negative there shall be no increase and the Annual Budget will remain the same as for the previous Financial Year.
- 6.5 All Strategic Plans once approved by the Board and the Shareholders may only be amended with the approval of all of the Shareholders as set out in **clause 10** and **Schedule 1**.
- 6.6 **Basis of preparation of Accounts**
- 6.6.1 The annual accounts of BCPP will be prepared in accordance with the laws applicable in, and the accounting standards, principles and practices generally accepted in, the United Kingdom.
- 6.7 **Financial Year**
- 6.7.1 The accounting reference date of BCPP will be 31 March unless changed in accordance with **clause 10** and **Schedule 1, Part B**.
7. **DIRECTORS AND MANAGEMENT**
- 7.1 **Composition of the Board and Board appointments**
- 7.1.1 The composition of the Board is not affected by the amendment and restatement of the Original Agreement nor this Agreement coming into force. The existing Board shall continue in full operation acting in accordance with this Agreement and the Articles.

- 7.1.2 Any subsequent or additional directors shall be appointed by the Board (or a committee of the Board) subject always to the prior approval of the shareholders in accordance with **Schedule 1, Part B**.

## 7.2 **Role and responsibilities**

- 7.2.1 The Board is responsible (within the parameters of the Strategic Plan) for the overall direction, supervision and management of BCPP, including the day to day management of BCPP and authority and responsibility for implementing the Strategic Plan.
- 7.2.2 The management of BCPP is vested in the Board provided that the day to day management of BCPP is the responsibility of the directors. Without prejudice to the generality of the foregoing and subject to the express provisions of this Agreement, the Board will determine the general policy of BCPP and the manner in which that is to be carried out in light of the Strategic Plan as adopted by the Shareholders and will reserve to itself all matters involving major or unusual decisions and will procure that BCPP and its Subsidiaries will:
- 7.2.2.1 transact the Business on arm's length terms; and
- 7.2.2.2 without prejudice to the terms of any Related Agreements, maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business including, but not limited to, employers liability insurance, public liability insurance, professional indemnity insurance and director's and officer's insurance, in each case (without prejudice to the generality of the foregoing) for the appropriate value determined by the Board; and
- 7.2.2.3 comply with the provisions of **clause 8**.
- 7.2.3 The specific responsibilities of the Chief Executive will be determined by the Board from time to time.
- 7.2.4 The Board shall implement any decision reached pursuant to the Shareholder Reserved Matters, subject to obtaining the requisite approval under **clause 10**.

## **Appointment and removal of Chief Executive**

- 7.3 No Chief Executive will be appointed to office (or removed from office) unless approved in accordance with **clause 10**.

## **Approval of Directors' term of office**

- 7.4 The Shareholders shall be required to approve the continuing appointment of any director whose term of office has expired and which the Company wishes to extend at an annual general meeting of BCPP in accordance with the provisions in **Part B of Schedule 1**.
- 7.5 In the event that any director appointment at the end of their term is not approved by the Shareholders then the Shareholders agree to take any necessary action (including the passing of any resolution) required by the Shareholders and/or the Board to remove such director at such time.

## **8. BOARD MEETINGS AND RESOLUTIONS**

### **8.1 Frequency**

- 8.1.1 The Board will meet at least four times a year.

## 8.2 Notice

- 8.2.1 Any director may call a meeting of the Board by giving not less than 5 Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the other directors.
- 8.2.2 Notice of any Board meeting must indicate:
  - 8.2.2.1 its proposed date and time;
  - 8.2.2.2 where it is to take place;
  - 8.2.2.3 the proposed agenda of items; and
  - 8.2.2.4 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should simultaneously communicate with each other during the meeting.
- 8.2.3 Subject to Article 9.3, notice of any Board meeting must be given to each director but need not be in writing.

## 8.3 Participation

- 8.3.1 Directors will be treated as participating in a directors' meeting or part of a directors' meeting when:
  - 8.3.1.1 the meeting has been called and takes place in accordance with this Agreement; and
  - 8.3.1.2 they can each simultaneously communicate with and to the others participating in the meeting any information or opinions they have on any particular item of the business of the meeting.
- 8.3.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or, provided **clause 8.3.1.2** is complied with, how they communicate with each other.
- 8.3.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

## 8.4 Quorum

- 8.4.1 The quorum for the transaction of business at any Board meeting shall be four directors participating in the meeting, provided at least two of whom shall be non-executive directors.
- 8.4.2 If there is no quorum participating in any meeting of the Board within 30 minutes after the time fixed for the meeting or, if during the meeting a quorum ceases to be participating, the meeting will be adjourned to such time (not being earlier than 5 Business Days after the date of the original meeting unless otherwise agreed by all the directors) as the director or directors participating in the meeting determine. All directors will be notified of the adjournment.

## 8.5 Voting

- 8.5.1 Subject to **clauses 8.7.1** and **10** any resolution proposed to the Board will be approved if more votes are cast for it than against it.

## 8.6 **Written Resolutions**

8.6.1 The Board may pass any resolution by way of a written resolution signed by a majority of the directors or to which a majority of eligible directors has otherwise indicated agreement in writing.

## 8.7 **Chair**

8.7.1 The position of Chair of the Board will be filled by one of the independent non-executive directors of the Board and will be appointed by a Shareholder Majority in accordance with **Schedule 1, Part B**. If the Chair is not present at any Board meeting, the directors present may appoint any one of their number to act as Chair for the purpose of the meeting. The Chair of the Board will have a casting vote on any tied decision.

## 8.8 **Alternates**

8.8.1 Each Director will only be entitled to appoint as an alternate (i) any other director; or (ii) any other person in respect of which prior approval has been obtained from the Shareholders.

8.8.2 The rights and responsibilities of an alternate and the procedure for terminating his/her appointment are set out in the Articles.

## 8.9 **Observers**

8.9.1 Each of the Shareholders may each invite one person to attend any meetings of the Board and if so invited they may attend and speak (but not vote).

## 8.10 **Board Committees**

8.10.1 The Board will determine from time to time if it is appropriate to establish any committees of the Board and shall determine the scope, authority and any terms of reference for any such committees at the time of such creation.

## 8.11 **Subsidiary Boards**

8.11.1 Subject always to receiving the approval of all of the Shareholders in accordance with **Schedule 1, Part A**, the Board will determine the composition, governance arrangements and limits of authority of any and all subsidiaries of BCPP and each of the Shareholders agrees to exercise all of their powers as a Shareholder to seek to ensure that all of the constitutional documents of any subsidiary reflect at all times the agreed position determined by the Board (including, but not limited to, any agreed scope and limits of authority and any restrictions imposed by the Financial Conduct Authority on BCPP or any subsidiary of BCPP).

8.11.2 Each Shareholder shall nominate a representative from time to time to be its representative at shareholder meetings and shall notify the Company accordingly. A Shareholder may notify the Board at any time in writing of a change in representative.

## 9. **SHAREHOLDER MEETINGS**

9.1 General meetings of the Shareholders will take place in accordance with the Companies Act 2006 and the Articles including that:

9.1.1 the meeting will be quorate once the holders of 66.6% or more of the A Shares from time to time are represented at the meeting (either in person or by proxy) and, for the avoidance of doubt, any matter that requires a Shareholder Majority or unanimous shareholder consent under this Agreement will not have the threshold for such consent reduced by virtue of not all of the Shareholders being present at a meeting;

- 9.1.2 the notice of meeting will set out an agenda identifying in reasonable detail the matters to be discussed (unless the Shareholders otherwise agree);
- 9.1.3 the Chair (who shall be the Chair of the Board subject to **clause 10.4**) of the meeting will not have a casting vote.
- 9.2 Each of the Shareholders may each invite one person to attend any general meetings of the Shareholders and if so invited they may attend and speak (but not vote).
10. **CONDUCT OF BCPP'S BUSINESS AND RESERVED MATTERS**
- 10.1 Each of the Shareholders covenants with each other that so long as this Agreement remains in full force and effect it will:
- 10.1.1 act in good faith towards the other Shareholders to discharge its statutory obligations under Regulation 7(2)(d) of the Investment Regulations (to include its approach to pooling investments within its investment strategy statement) primarily via the Business;
- 10.1.2 promptly notify the others of any matters of which it becomes aware which may affect BCPP or the Business;
- 10.1.3 generally do all things necessary to give effect to the terms of this Agreement (including, so far as it is legally able, assisting BCPP with maintaining regulatory authorisation, exercising all voting rights and powers (direct or indirect) available to it in relation to BCPP in a manner consistent with the terms of this Agreement);
- 10.1.4 use all reasonable endeavours to promote and develop the business of BCPP and any Subsidiaries to the best advantage in accordance with good business practice and the highest ethical standards and will not do or say anything which is intended to damage the goodwill or reputation of the Company or any of the investment vehicles operated by BCPP;
- 10.1.5 appoint a representative to act on behalf of that Shareholder at general meetings;
- 10.1.6 exercise all voting and other rights and powers of control as are from time to time respectively available to it under this Agreement and the Articles and otherwise in relation to BCPP and its beneficial holdings in it and will execute and deliver such waivers and shall take or refrain from taking all other appropriate action within its power so as to procure that the provisions of this Agreement binding on it are duly observed and complied with and given full force and effect and all actions required by it are carried out promptly;
- 10.1.7 exercise all voting and other rights and powers respectively available to it to procure the alteration of the Articles to the extent necessary to permit the affairs of BCPP to be so operated (if it shall not be possible to secure the operation of this Agreement as set out in **clauses 10.1.1 to 10.1.6** by reason of any contrary provision of the Articles);
- 10.1.8 subject to the preceding provisions of this **clause 10.1**, observe the provisions of the Articles.
- 10.2 The undertakings of each Shareholder under this **clause 10** shall in each case be several so that each Shareholder shall only be liable for its own actions or failures to act in accordance with them, and none of them shall be liable for a failure to procure anything required by this **clause 10** where such failure is attributable to any action or failure to act by another Shareholder, but without prejudice to the liability of such other Shareholder.
- 10.3 Notwithstanding any other provision of this Agreement, should any Shareholder or any other person connected with it be in dispute with or have a conflict of interest with BCPP or



any of its Subsidiaries, such Shareholder shall not do or omit to do anything which would or would be likely to prevent BCPP or any of its Subsidiaries from exercising or from deciding whether or not to exercise such rights as it may have against the Shareholder in dispute with it, or in respect of the matter in relation to which the conflict of interest arises. This **clause 10** is without prejudice to the provisions of **clause 27**.

10.4 If the Chair of the Board is unable to attend any general meeting of BCPP, another person shall be selected by a Shareholder Majority in accordance with **Schedule 1, Part B** to chair such general meeting in accordance with the Articles. The Chair shall not have a casting vote at any general meeting of BCPP.

10.5 BCPP and the Shareholders agree to procure that an Annual general meeting is held once each year with a view to approving the Annual Budget and any other resolutions to be proposed.

#### 10.6 **Structural Review**

10.6.1 Each of the Shareholders agree that on the anniversary of the previous review, they will procure that the Board will formally review and report on the corporate structure of BCPP and any of its Group Companies and the operation of their respective boards of directors and board committees so that each of the Shareholders can each consider whether more efficient governance, any reduction of costs and/or improvement of performance is possible (and in the event that the Board resolves that changes are necessary and/or appropriate in its opinion at such time it will provide full details of the Board's recommendations to each of the Shareholders for due Shareholder consideration and approval before effecting any such changes).

#### 10.7 **Reserved Matters**

10.7.1 It is agreed by the parties that BCPP will not, and will procure that any subsidiary of BCPP will not and the Shareholders will exercise their powers in relation to BCPP to procure that (save as contemplated in this Agreement) BCPP will not, and will use best endeavours to procure that any subsidiary of BCPP will not:

10.7.1.1 carry out any of the A List Reserved Matters without the prior written approval of all of the Shareholders;

10.7.1.2 or carry out any of the B List Reserved Matters without the prior approval of a Shareholder Majority.

#### 11. **DEADLOCK**

11.1 For the purpose of this **clause 11** a "**Deadlock Situation**" means:

11.1.1 any of the Shareholder Reserved Matters set out in **clause 10.7.1** not being approved by the requisite unanimity or majority and no resolution being reached following referral by any of the Shareholders for dispute resolution in accordance with the procedure set out in **clause 12**;

11.1.2 any other matter notified to the Board in a Deadlock Notice to be a "Deadlock Situation" between any of the Shareholders; or

11.1.3 any dispute between any of the Shareholders as to either:

11.1.3.1 the amount of profit lawfully available for distribution in accordance with **clause 5.1.2**; or

11.1.3.2 the amount by which any distribution will be reduced in accordance with **clause 5.3**; or

11.1.4 any dispute between the Shareholders which cannot be resolved in accordance with **clause 12** (Dispute Resolution Procedure).

11.1.5 any dispute between any of the Shareholders and BCPP in relation to a request for additional funds or financial support made under **clauses 4.11 to 4.19**.

## 11.2 **Deadlock Notice**

11.2.1 Any Shareholder may serve a Deadlock Notice on BCPP and the other Shareholder(s) if a Deadlock Situation has arisen. The Deadlock Notice will contain reasonable details of the Deadlock Situation.

## 11.3 **Business during a Deadlock Situation**

11.3.1 If any Deadlock Situation arises and for so long as it continues, each Shareholder will use its best endeavours (in so far as it is able by the exercise of its rights and powers in relation to BCPP) to procure that, notwithstanding the fact that there is a Deadlock Situation, BCPP can continue to carry on the Business in the ordinary course.

## 11.4 **Deadlock resolution**

11.4.1 If a Deadlock Notice has been served by any Shareholder confirming that a Deadlock Situation has arisen then each of the Shareholders concerned will use their best endeavours to resolve the Deadlock Situation within 10 Business Days after the Deadlock Date.

## 11.5 **Referral to Shareholders**

11.5.1 If a Deadlock Situation has arisen and it has not been resolved within 10 Business Days after the Deadlock Date then each Shareholder hereby agrees to refer the Deadlock Situation to the Section 151 Officer of each authority, as set out in **Schedule 4**.

11.5.2 The Section 151 Officer of each authority will have 30 days (or such other timeframe as is agreed between the Shareholders) to meet and resolve the Deadlock Situation as they determine appropriate.

11.5.3 If the Section 151 Officer of each of the relevant Shareholders do not resolve the Deadlock Situation within 30 days after the Deadlock Date:

11.5.3.1 the provisions of **clauses 11.6.1 to 11.7.3** shall apply; and

11.5.3.2 no decision relating to the Deadlock Situation can be taken or imposed on BCPP or any Shareholder until such later time (if any) as the Deadlock Situation has been resolved.

## 11.6 **Referral to mediation process**

11.6.1 Where the relevant Section 151 Officer referred to in **clause 11.5.1** of each of the authorities in dispute are unable to resolve such dispute, or where in the opinion of the Board such dispute would be more effectively resolved in another forum, the Board may refer such dispute to a mediator appointed by the relevant Shareholders until such dispute is resolved.

11.6.2 The Shareholders shall each bear their own costs incurred in relation to the mediation.

## 11.7 **Referral to arbitration process**

11.7.1 If the dispute is not resolved within 40 days of referral of the dispute to mediation any Shareholder involved in such dispute may (by service of a written

notice on the other Shareholders and BCPP) refer the dispute to an arbitrator who shall be of not less than 10 years standing or qualification.

11.7.2 If the Shareholders cannot agree on an arbitrator within 15 days of service of the written notice on the other Shareholders and BCPP, the Board shall appoint an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators in England and Wales.

11.7.3 The arbitrator's decision shall be final and binding on the Shareholders and BCPP. The costs of the arbitration shall be paid as directed by the arbitrator.

## 12. **DISPUTE RESOLUTION PROCEDURE**

12.1 The parties agree that in the event of any dispute between any of the Shareholders regarding any of the provisions of this Agreement, other than the matters set out in **clause 11** the Shareholders shall seek to resolve such dispute as follows:

12.1.1 any Shareholder may serve a Dispute Notice on BCPP and the other Shareholder(s) if that Shareholder believes that a dispute has arisen;

12.1.2 the Dispute Notice shall contain reasonable details of the dispute and the reasons why that Shareholder believes that a dispute has arisen; and

12.1.3 the Shareholders shall thereafter use best endeavours to resolve the dispute within 15 days of service of the Dispute Notice.

12.2 Where a dispute has not been resolved within 10 Business Days of service of the Dispute Notice in accordance with **clause 12.1** then any Shareholder shall be entitled to serve a Deadlock Notice on the BCPP and the provisions of **clause 11** (Deadlock) shall apply provided that **clause 11.4.1** shall not apply and for the purposes of **clause 11.5.1** it shall be assumed that the Deadlock Situation has not been resolved within 10 Business Days after the Deadlock Date.

## 13. **ANTI-BRIBERY AND CORRUPTION**

### 13.1 **Compliance by BCPP**

13.1.1 BCPP will, and the Shareholders will exercise all their powers in relation to BCPP to procure that BCPP will:

13.1.1.1 not do or omit to do any act or thing which constitutes or may constitute a breach of and/or an offence under Anti-Bribery Laws or would cause any Shareholder to be liable for an offence under any such laws; and

13.1.1.2 comply with the Adequate Procedures and the Anti-Corruption Policy as amended from time to time.

### 13.2 **Compliance by the Shareholders**

13.2.1 Each Shareholder will not do or omit to do any act or thing which constitutes or may constitute a breach of and/or an offence under Anti-Bribery Laws and would cause the other Shareholder or BCPP to be liable for any offence under any such laws.

## 14. **INFORMATION TO SHAREHOLDERS AND CONFIDENTIALITY**

### 14.1 **Provision of information to Shareholders**

14.1.1 BCPP will, and the Shareholders will procure that BCPP will, supply the Shareholders with such financial information as is necessary to keep each Shareholder informed about how the business of BCPP is performing (including

any other information relating to operational or risk matters) as determined by each Shareholder.

14.1.2 In particular BCPP will supply each Shareholder with:

14.1.2.1 quarterly management accounts and reports of BCPP containing such information (including as to whether the structure and operation of BCPP and any of its Group Companies and their respective boards of directors and board committees are operating effectively) as the Shareholders reasonably require from time to time, within 90 days of the end of the quarter to which they relate unless otherwise agreed between the Company and the Shareholders;

14.1.2.2 a copy of the annual accounts after they have been audited and signed by the auditors within 6 months of the end of the Financial Year to which they relate;

14.1.2.3 the outcome of a structural review into the efficiency of the governance structure noted under **clause 10.6.1**; and

14.1.2.4 a report setting out the progress of the Company in relation to the objectives and/or milestones set out in the Strategic Plan and/or the Additional Strategic Plan.

14.1.3 BCPP will:

14.1.3.1 allow each Shareholder and their respective authorised Representatives access at all reasonable times to examine the books and records of BCPP and to discuss its affairs with the directors and senior management; and

14.1.3.2 provide, in accordance with the Local Authorities (Companies) Order 1995, each Shareholder and their respective authorised Representatives with such other information relating to the operations and management of BCPP as they may reasonably request to discharge such Representatives' duties. In determining the reasonableness of such requests, regard shall be had to the Shared Objectives set out in **Schedule 2** and the duties and responsibilities of the Shareholders.

## 14.2 Confidentiality

14.2.1 In this Agreement "**Confidential Information**" means, subject to **clause 14.2.7**:

14.2.1.1 any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with this Agreement and/or any Related Agreement by or on behalf of a party (the "**Discloser**") to another party (the "**Recipient**") or any of the Recipient's Representatives whether before, on or after the date of this Agreement and which relates (in whole or in part) to a party or its business and such information is of a material and commercially sensitive nature;

14.2.1.2 the terms of or subject matter of this Agreement or any Related Agreement or any discussions or documents in relation to them and in respect of such information each party will be deemed to be a Recipient where such information is of a material and commercially sensitive nature;

- 14.2.1.3 any information (whether written, oral, in electronic form or in any other media) about BCPP (including its customers, businesses, assets or affairs) which a Shareholder may have or acquire by virtue of the Shareholder's shareholding in BCPP and/or its right to appoint directors to the Board (in each case the Shareholder will be treated as a "**Recipient**").
- 14.2.2 Subject to **clauses 14.3.1 to 14.3.3**, the Recipient agrees with the Discloser that it will, and will procure that each of its Representatives will, subject to **clauses 14.2.3 and 14.2.7 and clause 19**:
  - 14.2.2.1 keep that Confidential Information secret and only disclose it in the manner and to the extent expressly permitted by this Agreement;
  - 14.2.2.2 use that Confidential Information solely for the purpose of exercising or performing its rights and obligations under this Agreement or any Related Agreement and (where the Recipient is a Shareholder and the Confidential Information relates to BCPP) for the purpose of monitoring that Shareholder's investment in BCPP and compiling its own accounts and tax returns and complying with relevant regulatory requirements (each a "**Purpose**" and together the "**Purposes**");
  - 14.2.2.3 only make such copies, summaries, extracts, transcripts, notes, reports, analyses and recordings (in any form of media) that use, contain or are based on or derived from Confidential Information as are reasonably necessary to fulfil each Purpose; and
  - 14.2.2.4 keep that Confidential Information safe and secure and apply to it documentary and electronic security measures that match or exceed those the Recipient operates in relation to its own confidential information and will never exercise less than reasonable care.
- 14.2.3 The Recipient may disclose that Confidential Information to those of the Recipient's Representatives who need access to that Confidential Information to fulfil the Purposes provided that before any such disclosure:
  - 14.2.3.1 the Recipient must make that Representative aware of the fact that the Confidential Information is confidential and the obligations of confidentiality contained in this Agreement; and
  - 14.2.3.2 (unless the Representative is an employee, officer or elected Member of the Recipient) such Representative will enter into a confidentiality agreement with the Recipient on terms substantially equivalent to those contained in this Agreement.
- 14.2.4 If a Recipient makes any disclosure to one of its Representatives under **clause 14.2.3** the Recipient will:
  - 14.2.4.1 take reasonable steps to procure that its Representative will not do or omit to do anything which if done or omitted to be done by the Recipient would constitute a breach of **clause 14** of this Agreement; and
  - 14.2.4.2 be liable for the acts and omissions of its Representatives in respect of the relevant Confidential Information as if they were acts or omissions of the Recipient.
- 14.2.5 The Recipient of any Confidential Information may disclose that Confidential Information to the extent required by law or a court of competent jurisdiction or

the rules of any applicable listing authority, securities exchange or governmental or regulatory body provided that the Recipient will where reasonably practicable and lawful:

- 14.2.5.1 notify the Discloser of that Confidential Information in writing in advance of such disclosure;
  - 14.2.5.2 consult with the Discloser as to the content, purpose and means of disclosure; and
  - 14.2.5.3 seek to make such disclosure subject to obligations of confidence consistent, so far as reasonably possible, with the terms of this Agreement.
- 14.2.6 No licence or right to use any patent, copyright, registered design, unregistered design, trademark, trade name or similar right or any right to use any Confidential Information or trade secrets is granted by any party to another party save as set out expressly in this Agreement.
- 14.2.7 **Clauses 14.2.1 to 14.2.6** will not extend to Confidential Information which:
- 14.2.7.1 at the time of disclosure was in the public domain or subsequently enters into the public domain other than as the direct or indirect result of a breach of this Agreement by the Recipient of that Confidential Information or any Recipient's Representative; or
  - 14.2.7.2 the Recipient can prove to the reasonable satisfaction of the Discloser of that Confidential Information from written records or other substantive evidence:
    - (a) has been received by the Recipient (or one of its Representatives) at any time from a third party who did not acquire it in confidence and who is free to make it available to the Recipient (or the relevant Representative); or
    - (b) was independently developed by the Recipient (or one of the Recipient's Representatives) without any breach of this Agreement;
  - 14.2.7.3 may need to be disclosed or released into the public domain by Shareholders or their representatives, given that such persons are or work for public and local authorities pursuant to relevant local authority legislation, rules and regulations.
- 14.2.8 **Clause 14.2.7.2** will not apply to the Confidential Information referred to in **clause 14.2.1.2**.
- 14.2.9 All obligations in **clauses 14.2.1 to 14.2.8** will survive termination of this Agreement without limit in time.

### 14.3 Freedom of Information

- 14.3.1 The parties each acknowledge and agree that:
  - 14.3.1.1 each party may be regarded as a public authority for purposes of the FOIA Legislation and is therefore subject to the requirements of the FOIA Legislation, and may receive Requests for Information;
  - 14.3.1.2 each Request Recipient shall be responsible for determining at its absolute discretion whether:

- (a) the information requested in the Request for Information is relevant to and in connection with the Agreement;
  - (b) a Request for Information in connection with this Agreement is valid under the FOIA Legislation, as well as all other considerations relevant in the assessment of an information request under the FOIA Legislation, such as any considerations (as may be applicable) regarding the cost of complying with a request or any charges for responding to a request, whether the request is repeated, vexatious or manifestly unreasonable and any other relevant considerations;
- 14.3.1.3 any information sought (including Confidential Information) is subject to any exemption and/or exception from disclosure and/or publication in accordance with the relevant provisions of the FOIA Legislation or is to be disclosed in response to a Request for Information, and nothing in this Agreement shall remove or in any way limit that discretion of the Request Recipient; and
- 14.3.1.4 in some circumstances, consistent with the spirit of the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, it may not be possible or reasonable for the Request Recipient to provide notice of any Request for Information or consider the comments of the other parties in relation to it, prior to responding to such a request. Reasonable steps should, where appropriate, be taken to give other parties advance notice, or failing that, to draw it to such parties' attention afterwards.
- 14.3.2 The other parties agree to reasonably assist and cooperate with the Request Recipient (without charge), bearing in mind always the time limits imposed under the FOIA Legislation, as notified to them by the Request Recipient, to enable the Request Recipient to comply with its obligations under the FOIA Legislation.
- 14.3.3 Subject to **clauses 14.3.1.2** and **14.3.1.4**, where the Request Recipient receives a Request for Information:
- 14.3.3.1 the Request Recipient will notify the party whose Confidential Information is the subject of the Request for Information (the "**Affected Party**") as soon as reasonably possible, confirming what Confidential Information is being requested and disclosing the Request for Information to each Affected Party; and
  - 14.3.3.2 the Request Recipient agrees to discuss in good faith with the Affected Party as to whether a relevant exemption/exception to the requirement to disclose the relevant Confidential Information under the FOIA Legislation might be applicable, provided that the Affected Party makes itself available for such discussions within a reasonable time (and in any event within five Business Days of being notified of the Request for Information) so that the Request Recipient has a reasonable opportunity to consider the Affected Party's comments prior to the deadline for the Request Recipient to respond to the Request for Information.
- 14.3.4 Where a party receives a Request for Information and another party holds information or records on behalf of that party, upon request, such other party agrees to provide the first party with a copy of all such information related to the request for information, in the form that the first party reasonably requires within five Business Days (or such other period as the first party may reasonably specify) of the first party's request.

15. **TRANSFER OF SHARES**

15.1 **Restrictions on transfer**

- 15.1.1 Save as set out in this **clause 15**, no Shareholder may transfer any Shares other than in accordance with the Articles, this Agreement and the Companies Act 2006, as appropriate.
- 15.1.2 Save as contemplated in this Agreement, each of the Shareholders undertakes that it will not create or permit to exist any Encumbrance over or in respect of all or any part of its Shares nor assign or otherwise purport to deal with its beneficial ownership in, or any right relating to, its Shares separate from the legal ownership of such Shares.
- 15.1.3 In the event that two or more Shareholders combine, such combined entity may only hold one (1) A Share following such combination and any other A Shares held by such combined entity or its separate, component predecessor Shareholders shall be purchased by BCPP at par value, subject to and in accordance with the Companies Act 2006, and such combined entity shall co-operate with BCPP to effect such purchase.
- 15.1.4 In the event that BCPP is incapable of implementing a purchase of its own Shares as anticipated by either **clause 15.1.3** or **clause 16.3**, any Shareholder that would otherwise be required to sell its Share(s) back to BCPP agrees that (if required to do so by all of the other Shareholders) it shall not exercise any rights to vote, accept any dividend that has not been declared nor exercise any other rights attached to such Share(s) until such time as BCPP is able to and does implement the proposed purchase of the relevant Share(s).
- 15.1.5 If any Shareholder is replaced as the administering authority of an LGPS fund and its entire holding of Shares in the Company does not transfer automatically to any replacement administering authority, such Shareholder may with the consent of the Board and the approval of Shareholders as an A List Reserved Matter, transfer all (but not part only) its Shares to such replacement administering authority subject to the replacement administering authority entering into a deed of adherence substantially in the form set out in **Schedule 3**.

15.2 **Exiting Shareholders**

- 15.2.1 Save in the case of a transfer of Shares in accordance with **clause 15.1.5**, in the event that a Shareholder wishes to cease to be a Shareholder in the Company, a Shareholder shall be required to serve a written notice on the Board of BCPP at least 12 months prior to the proposed exit date, which must be 31 March in any year unless such other date is approved by the Board and all of the other Shareholders (the "**Withdrawal Date**").
- 15.2.2 Save in the case of a transfer of Shares in accordance with **clause 15.1.5**, in the event of a Shareholder ceasing to be a Shareholder (an "**Exiting Shareholder**"), the Exiting Shareholder shall pay to BCPP, in addition to any monies owing by the Exiting Shareholder to BCPP as at the Withdrawal Date, such sum as represents the contribution to the capitalised value of that proportion of the continuing and outstanding liabilities of BCPP which have been incurred before the Withdrawal Date and which is properly attributable to the Exiting Shareholder's share membership of BCPP.
- 15.2.3 Thereafter, save where (i) any defaulting Shareholder is required to cease being a Shareholder pursuant to **clause 16** (in which event the provisions of **clause 16.3** shall apply); or (ii) any Shareholder transfers its Shares in accordance with **clause 15.1.5**, on the Withdrawal Date:



15.2.3.1 **A Shares:** the A Shares held by the Exiting Shareholder shall be either (as agreed by the Exiting Shareholder and BCPP):

(a) (in the Board's absolute discretion and subject to first having obtained the FCA's permission pursuant to Article 77 of the CRR) purchased by BCPP at Fair Market Value in accordance with and subject always to Part 18 of the 2006 Act; or

(b) (without prejudice to the provisions of **clause 10.7 (Reserved Matters)** and **Schedule 1**) transferred to a new Shareholder at Fair Market Value,

within 3 months of the Withdrawal Date, the proceeds of such sale or transfer shall be paid to the Existing Shareholder (subject to the Company having sufficient reserves to do so and if it does not, at such date when it next has sufficient distributable reserves).

For the avoidance of doubt, if BCPP is unable to purchase the A Shares (as a result of insufficient distributable reserves and/or any other legal restriction in Part 18 of the 2006 Act) then BCPP shall not be under any obligation to purchase any such A Shares until such later time as the Board determines that BCPP is in a position to complete the proposed share buyback.

15.2.3.2 **B Shares:** the rights attached to B Shares in the event of a shareholder withdrawing are set out in **clause 4** above and **Article 27** of the Articles. Subject to those provisions, the proceeds of such sale or transfer shall be paid to the Exiting Shareholder within 3 months of the Withdrawal Date (subject to the Company having sufficient reserves to do so and if it does not, at such date when it next has sufficient distributable reserves).

15.3 There is annexed to this Agreement the contents of a previous letter agreed between the Shareholders in respect of a merger of two Shareholders. The terms of the annex are not incorporated into this Agreement but are included as guidance should a merger of two Shareholders occur.

#### 15.4 **Deed of Adherence**

15.4.1 If a Shareholder transfers its Shares in accordance with this Agreement to any person other than any Exiting Shareholder (including to any Permitted Transferee) it will procure that the transferee (including any Permitted Transferee) enters into a deed of adherence substantially in the form set out in **Schedule 3**.

#### 15.5 **Registration of Transfers**

15.5.1 The directors may refuse to register the transfer of any Share unless it is made in compliance with this **clause 15** and may request such evidence as the directors may reasonably think fit regarding any matter which they consider relevant to establish whether such transfer is permitted. If the evidence is not provided to the reasonable satisfaction of the directors within a reasonable time after it has been requested, or if in the reasonable opinion of the directors the information or evidence is false in any material respect, the directors may refuse to register the relevant transfer.

### 16. **CONSEQUENCES OF BREACH**

16.1 (Without prejudice always to the right of any Shareholder to make a claim against any other Shareholder for breach of the terms of this Agreement), a Shareholder shall be deemed to have committed an act of default (in this **clause 16** called a "**Default**") if:

- 16.1.1 it commits a material breach of its obligations under this Agreement which cannot effectively be remedied or which the Shareholder fails effectively to remedy within 15 Business Days of receipt of a notice in writing from a majority of the Shareholders or BCPP specifying the breach and requiring remedy; or
  - 16.1.2 it fails to participate in two consecutive duly convened general meetings (without good reason); or
  - 16.1.3 any of the events contained in Article 35 (*Deemed transfers to BCPP*) occur in respect of such Shareholder.
- 16.2 For the purposes of **clause 16.1.1** the expression "**material breach**" means a breach of any of the terms of this Agreement which is serious in the widest sense of having a serious effect on the benefit which any other Shareholder would otherwise derive from this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 16.3 if a Shareholder (in this **clause 16** called a "**Defaulting Shareholder**") is deemed to have committed a Default, a majority of each of the other Shareholders (having considered all relevant factors including, without limitation, any FCA requirements, regulatory capital requirements and all Procurement Legislation) may at any time within 30 Business Days of becoming aware of the Default serve notice in writing (a "**Default Notice**") on the Defaulting Shareholder in which event the Defaulting Shareholder shall be required to sell its A Share back to BCPP at par value. **Clause 15.2.3.2** shall then apply to the redemption of the Defaulting Shareholder's B Shares. In the event of any failure by the Defaulting Shareholder to co-operate with BCPP to effect such purchase, the Defaulting Shareholder hereby irrevocably and unconditionally appoints BCPP as its attorney for the purposes of executing such documents as are necessary to effect such purchase.

## 17. **TERMINATION**

- 17.1 This Agreement shall terminate (the "**Termination Date**") when either:
- 17.1.1 all the Shareholders agree in writing to its termination; or
  - 17.1.2 BCPP passes a resolution for its winding up, is subject to an order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off or has an administrator appointed in respect of it; or
  - 17.1.3 such number of Shareholders decide to withdraw from BCPP that a majority of the remaining Shareholders (after any such withdrawals) inform BCPP in writing (including in electronic form) that they are no longer able or willing to maintain BCPP's Regulatory Capital Requirements; or
  - 17.1.4 the Board determines, acting reasonably, that the business of BCPP may not lawfully be continued.
- 17.2 If the Shareholders pass a resolution pursuant to this Agreement or otherwise to wind up the Company by way of a members' voluntary winding-up they shall procure that the liquidator is a member of the Institute of Chartered Accountants in England and Wales acceptable to all the Shareholders and in default of agreement nominated at the request of any Shareholder by the President from time to time of such Institute.
- 17.3 Except to the extent each party has contractual obligations to the contrary, the Shareholders shall prove in the winding-up of the Company to the maximum extent permitted by law for all sums due or to fall due to them respectively from the Company and shall exercise all rights of set-off and generally do all such other acts and things as may be available to them in order to obtain the maximum receipts and recoveries.
- 17.4 To the extent that any or all of the Shareholders do not receive satisfaction in full in the winding-up of the Company of all sums due or to fall due to them the aggregate shortfall between all sums due or to fall due to the Shareholders and all amounts actually recovered

by the Shareholders from the Company or its liquidator (whether by direct payment or the exercise of any right of set-off or otherwise) shall be calculated and apportioned between the Shareholders in the same proportions as the Shareholders hold Shares at the time of the determination. The Shareholders shall make such contributions to each other as are necessary to procure that the Shareholders bear the aggregate amount of such shortfall in such proportions.

## 18. CONSEQUENCES OF TERMINATION

### 18.1 Rights and Obligations

18.1.1 Following the Termination Date:

18.1.1.1 the following will continue in force: **clauses 14.2.1 to 14.2.9**, together with any other terms of this Agreement which expressly or impliedly continue to have effect after expiry or termination of this Agreement; and

18.1.1.2 all other rights and obligations will immediately cease but without prejudice to any rights, obligations, claims (including without claims for damages for breach) and liabilities which have accrued before the Termination Date.

18.1.2 As soon as practicable after the Termination Date and in any event within 20 Business Days of the Termination Date, each Shareholder will, subject to the exception set out in **clause 18.2**,

18.1.2.1 return to the other Shareholders all Confidential Information of the other Shareholders (including all copies and extracts) in its possession or control;

18.1.2.2 return to BCPP all Confidential Information of BCPP (including all copies and extracts) in its possession or control;

18.1.2.3 destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any Confidential Information of the other Shareholder or BCPP ("**Records**"); and

18.1.3 cease to use the Confidential Information of the other Shareholders or BCPP.

18.2 Each Shareholder may retain any Confidential Information of the other Shareholders and/or BCPP and/or Records which it has to keep to comply with any legal or regulatory requirement or which it is required to retain for insurance, accounting or taxation purposes. The provisions of **clause 14** will continue to apply to retained Confidential Information and Records, which may only be used for the purposes for which they have been retained.

18.3 Each Shareholder will, upon request, confirm to the other Shareholders and BCPP in writing that it has complied with **clauses 18.1.2** and **18.2**.

## 19. NEW SHAREHOLDERS

In the event that the Board or any of the Shareholders proposes that an additional third party shareholder (which shall be another LGPS administering authority) should subscribe for new shares in BCPP, all of the parties hereby agree and undertake to each other that no such person shall be admitted as a new Shareholder of BCPP without the prior written consent of all of the Shareholders.

## 20. FURTHER ASSURANCE

Each Shareholder will at its own cost execute all such documents and do all such acts and things as any of the other Shareholders may reasonably request from time to time to give

each of the Shareholders full effect to the terms of this Agreement (including the rights given under it) and the transactions contemplated by it.

21. **INADEQUACY OF DAMAGES**

Each Shareholder acknowledges and agrees that damages alone would not be an adequate remedy for breach of the provisions of this Agreement. Accordingly, it agrees that any of the other Shareholders and/or BCPP will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of such clauses by it.

22. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement and no action taken by the parties in connection with it will create a partnership between the parties or give any party authority to act as the agent of or in the name of or on behalf of another party or to bind another party or to hold itself out as being entitled to do so.

23. **INDEPENDENT CONTRACTORS**

Each party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

24. **WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

25. **VARIATION/AMENDMENT**

No variation or amendment to this Agreement will be effective unless it is in writing and signed by a duly authorised representative on behalf of all of the parties provided that no variation or amendment will or may invalidate the continued application to BCPP of the "Teckal exemption" codified under Regulation 12 of the Public Contracts Regulations 2015.

26. **CONFLICT WITH ARTICLES**

Where the Articles conflict with this Agreement, the Shareholders agree that this Agreement will prevail, to the intent that they will if necessary procure the amendment of the Articles to the extent required to enable BCPP and its affairs to be administered in accordance with this Agreement.

27. **CLAIMS BY OR AGAINST SHAREHOLDERS**

27.1 Where any of the Shareholders asserts any claim against BCPP (the "**Claiming Shareholder**"), the other Shareholders shall be entitled to defend such claim in the name and at the expense of BCPP.

27.2 Where any other provision of this Agreement or of the Articles conflicts with the provisions of this clause, this clause shall prevail.

28. **NOTICE**

28.1 Any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the party to be given the notice or communication and:

28.1.1 sent to that party's address by pre-paid first class post or mail delivery service providing guaranteed next working day delivery; or

28.1.2 delivered to or left at that party's address (but not, in either case, by one of the methods set out in **clause 28.1.1**).

28.2 The address and representative for each party are set out below and may be changed by that party giving at least 10 Business Days' notice in accordance with this **clause 28**.

**Bedford Borough Council**

Borough Hall, Cauldwell Street, Bedford, MK42 9AP

For the attention of: s151 Officer

**Cumbria County Council**

117 Botchergate, Carlisle, CA1 1RD

For the attention of: s151 Officer

**Durham County Council**

County Hall, Durham, DH1 5UE

For the attention of: s151 Officer

**The East Riding of Yorkshire Council**

County Hall, Beverley HU17 9BA

For the attention of: Director of Corporate Resources

**Lincolnshire County Council**

County Offices, Newland, Lincoln, LN1 1YL

For the attention of: s151 Officer

**Middlesbrough Borough Council**

Fountain Court, 119 Grange Road, Middlesbrough, TS1 2DT

For the attention of: s151 Officer

**North Yorkshire County Council**

County Hall, Northallerton, North Yorkshire, DL7 8AL

For the attention of: s151 Officer

**The Council of the Borough of South Tyneside**

Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL

For the attention of: s151 Officer

**South Yorkshire Pensions Authority**

Oakwell House, 2 Beevor Court, Pontefract Road, Barnsley, South Yorkshire, S71 1HG

For the attention of: Fund Director

**Surrey County Council**

Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF

For the attention of: s151 Officer

**Warwickshire County Council**

PO Box 3, Shire Hall, Warwick, CV34 4RL

For the attention of: s151 Officer

**Border to Coast Pensions Pool Limited**

5<sup>th</sup> Floor Toronto Square, Leeds, England, LS1 2HJ South Shields NE33 2RL

For the attention of: Company Secretary

28.3 Any notice or communication given in accordance with **clause 28.1** will be deemed to have been served:

28.3.1 if given as set out in **clause 28.1.1**, at 9.00am on the 2<sup>nd</sup> Business Day after the date of posting; and

28.3.2 if given as set out in **clause 28.1.2**, at the time the notice or communication is delivered to or left at that party's address,

provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

28.4 For the purposes only of this **clause 28**, references to time of day are to the time of day at the address of the recipient parties referred to in **clause 28.2**.

28.5 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 28.1** were complied with.

28.6 This **clause 28** is subject to the provisions of the Companies Act 2006, the Articles and this Agreement regulating the giving of notices in relation to meetings of the directors or general meetings of the Shareholders.

29. **UNLAWFUL FETTER ON THE SHAREHOLDERS' STATUTORY POWERS**

Notwithstanding any other provision contained in this Agreement the Shareholders and BCPP shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of any of the Shareholders, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

30. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which will constitute an original but which will together constitute one agreement.

31. **COSTS AND EXPENSES**

Each party will bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of this Agreement.

32. **SEVERANCE**

If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect. In this event the parties will agree a valid and enforceable term to replace the severed term which, to the maximum extent possible, achieves the parties' original commercial intention and has the same economic effect as the severed term.

33. **ENTIRE AGREEMENT**

33.1 This Agreement and the Related Agreements constitute the entire agreement between the parties and, except to the extent provided in **clause 2.2**, supersede any prior agreement (in particular the Original Agreement) or arrangement in respect of their subject matter and:

33.1.1 no party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in this Agreement;

33.1.2 no party has entered into the Related Agreements in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in those Related Agreements; and

33.1.3 nothing in this **clause 33** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

34. **ASSIGNMENT**

Save as provided for by this Agreement or by the Articles, no Shareholder nor BCPP will be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this Agreement.

35. **RIGHTS OF THIRD PARTIES**

The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

36. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

37. **JURISDICTION**

Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

This document is executed as a **deed** and **delivered** on the date stated at the beginning of this Agreement.

## SCHEDULE 1

### Reserved Matters

#### **PART A – Matters for approval by all of the Shareholders (unanimous consent required)**

1. subject to FCA rules, extend the activities of the Company outside the scope of the Business or close down any operation of the Business;
2. subject to FCA rules, give any guarantee or indemnity outside the ordinary course of the Business to secure the liabilities of any person or assume the obligations of any person (other than a wholly owned subsidiary) (e.g. guaranteeing a lease that does not relate to the Business of the Company);
3. subject to FCA rules and save for any Permitted Contract, enter into or vary any contracts or arrangements with any of the Shareholders or any person with whom any shareholder is connected (whether as director, consultant, shareholder or otherwise) on terms which could give preferential rights to a specific Shareholder. For the purposes of this paragraph a **"Permitted Contract"** means any advisory or management agreement that puts into effect services to be provided to a Shareholder as a customer of the Company that are approved under the Strategic Plan and, where applicable, the agreement is on materially the same terms that have been agreed with any other Shareholder that is a recipient of the same services;
4. enter into any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis;
5. enter into or vary any agreement for the provision of consultancy, management or other services by any person which will, or is likely to result in, the Company being managed otherwise than by its directors;
6. change the name of the Company;
7. pass a resolution or present a petition to wind up the Company or apply for an administration order or any order having similar effect in a different jurisdiction in relation to the Company unless in any case the Company is at the relevant time unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
8. reduce or cancel any share capital of the Company, purchase its own shares, hold any shares in treasury, allot or agree to allot, whether actually or contingently, any of the share capital of the Company or any security of the Company convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of the Company or alter the classification of any part of the share capital of the Company (in each case other than as expressly permitted by this Agreement and/or the Articles where no prior consent shall be required including, without limitation, pursuant to either **clause 4 (Finance & Regulatory Capital)** and/or **clause 16 (Consequences of Breach)** and/or **Article 26** of the Articles (**Issue of Shares and Pre-Emption Rights**));
9. other than as expressly permitted by this Agreement and/or the Articles, redeem or buy any existing Shares or otherwise reorganise the share capital of the Company;
10. admit any person as a member of the Company or an investor in the BCPP pool;



11. enter into any partnership, joint venture or profit sharing arrangement with any person (excluding entering into any investment or investment vehicle);
12. save in the event of a Required Amendment, alter any of the provisions of the Articles or any of the rights attaching to the Shares. For the purposes of this paragraph a "**Required Amendment**" means any amendment to the Articles that is either (i) required pursuant to a direct request from the FCA; or (ii) the Company has received written advice from its legal advisers that a change to the Articles is required to comply with FCA rules;
13. amalgamate or merge with any other company or business undertaking;
14. sell, lease (as lessor), license (as licensor), transfer or otherwise dispose of any of its material assets otherwise than in the ordinary course of the Business;
15. commence or settle any claim, proceedings or other litigation brought by or against BCPP, except (i) in relation to debt collection (not exceeding £500,000) in the ordinary course of the Business and (ii) in relation to any investment related claims or proceedings relevant to the investment sub-funds or other collective investment vehicles established by BCPP; or (iii) in respect of non-material claims, proceedings or other litigation which involve actions for losses of less than £1,000,000 or such lower amount as the Company and the Shareholders may determine from time to time;
16. take out any third party loan(s) in respect of BCPP which (in aggregate) exceed the sum of £5,000,000;
17. form any subsidiary of BCPP, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a subsidiary of BCPP; other than where such action is taken in accordance with the Strategic Plan;
18. determine the composition, governance arrangements and limits of authority of any and all subsidiaries of BCPP in such a way that will not invalidate the continued application to BCPP of the "Teckal exemption" codified under Regulation 12 of the Public Contracts Regulations 2015;
19. make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of the Company or pay or declare any dividend or other distribution to the Shareholders;
20. register the transfer of Shares on the replacement of any Shareholder as the administering authority of an LGPS fund pursuant to **clause 15.1.5**.

## **PART B – Matters for approval by a Shareholder Majority only**

1. enter into or materially vary any licence or other similar agreement relating to intellectual property to be licensed to or by the Company which is otherwise than in the ordinary course of the Business;
2. appoint or remove the auditors of the Company;
3. alter the Company's accounting reference date;
4. make any significant change to any of the Company's accounting or reporting practices other than conforming with any changes made to the accounting standards adopted by the Company;
5. any proposal to not table the annual accounts of the Company at the Company's annual general meeting;
6. approve the remuneration policy for any directors from time to time and to assist in the approval of the policy the Company will provide such information to support the Shareholders in exercising their authority with respect to the reserved matter as may be reasonably required and at all times in line with good remuneration disclosure practice in the United Kingdom, including but not limited to the UK Corporate Governance Code, and shall confirm indications of remuneration amounts implied under the policy;
7. establish any pension scheme (i.e. for employees of the Company);
8. incur in any financial year any item or series of items of capital expenditure including finance leases (but excluding operating leases) of more than £5,000,000 (unless provided for in the Strategic Plan);
9. enter into or vary any operating lease either as lessor or lessee, of any plant, property or equipment of a duration exceeding 5 years or involving aggregate premium and annual rental payments in excess of £500,000 (unless provided for in the Strategic Plan or such other amount as the Company and the Shareholders may determine from time to time);
10. approval of any conflict or potential conflict of interest any director may have which would preclude him or her from being included in the quorum of any meeting of the directors;
11. appointment of the Chair and any director, any alternate director (who is not at the time a director of the Company) and including, for the avoidance of doubt any subsequent Chair in accordance with the Companies Act 2006 or otherwise;
12. removal of any director and, for the avoidance of doubt, the Chair in accordance with the Companies Act 2006 or otherwise; and
13. approving and adopting a Strategic Plan (including the Annual Budget) and / or amending any such plan.

## **SCHEDULE 2**

### **Shared Objectives**

1. To provide the administering authorities a compliant and effective means of meeting the government's requirement for the pooling of LGPS funds and thereby to achieve scale, improved governance, enhanced capability and capacity to deliver infrastructure investment and fees savings and to comply with all governance requirements placed on the investment function of LGPS administering authorities.
2. To operate with a common or like-minded responsible investor/Shareholder voting policy which focuses on securing high levels of corporate governance by the companies invested in.
3. To share legal ownership, control and decisive influence over BCPP and to allocate the associated costs of operating BCPP between the administering authorities in an equitable manner.
4. Following the transitioning of assets to BCPP, the Authorities shall primarily but not exclusively invest their LGPS pension fund assets either through the collective investment vehicle(s) operated by BCPP, as the primary and exclusive collective investment vehicle(s) for all eligible fund assets, or by appointing BCPP to manage any non-eligible pension assets outside of such vehicle(s).

## SCHEDULE 3

### Deed of Adherence

This Agreement is made on

20[●●]

#### BETWEEN

- (1) **BCPP Limited**, a company incorporated in England and Wales (registered number [NUMBER] whose registered office is at [ADDRESS] ("**the Company**");
- (2) The persons whose names and addresses are set out in the Schedule to this Agreement ("**the Existing Shareholders**"); and
- (3) [NAME OF NEW SHAREHOLDER] whose registered office is at [ADDRESS] ("**the New Shareholder**").

#### BACKGROUND

This Agreement is supplemental to a shareholders' agreement dated [DATE] and entered into by [DETAILS] ("**the Shareholders' Agreement**").

The New Shareholder wishes to [

subscribe for] [acquire] [A Ordinary Shares] [and] [B Ordinary Shares].

#### OPERATIVE PROVISIONS

5. The definitions contained in the Shareholders' Agreement will have the same meanings in this Agreement save where the context otherwise requires.
6. The New Shareholder confirms (subject to paragraph 3 below) that it has been given and read a copy of the Shareholders' Agreement and covenants with each person named in the Schedule to this Agreement to perform and be bound with effect from the date of this Agreement by all the terms of the Shareholders' Agreement as if the New Shareholder was a party to the Shareholders' Agreement as a Shareholder. By executing this Agreement all parties confirm that it is the intention that the New Shareholder shall be bound by and entitled to the benefit of the provisions of the Shareholders' Agreement as if it was a party to the Shareholders' Agreement and named in the Shareholders' Agreement as a Shareholder.
7. This Agreement may be executed in any number of counterparts, each of which when executed will be an original but together will constitute one and the same agreement.
8. This Agreement will be governed by and construed in accordance with the laws of England and Wales.
9. This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

## **SCHEDULE**

The Existing Shareholders

- (1) BEDFORD BOROUGH COUNCIL**
- (2) CUMBRIA COUNTY COUNCIL**
- (3) DURHAM COUNTY COUNCIL**
- (4) THE EAST RIDING OF YORKSHIRE COUNCIL**
- (5) LINCOLNSHIRE COUNTY COUNCIL**
- (6) MIDDLESBROUGH BOROUGH COUNCIL**
- (7) NORTH YORKSHIRE COUNTY COUNCIL**
- (7) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE**
- (8) SOUTH YORKSHIRE PENSIONS AUTHORITY**
- (9) SURREY COUNTY COUNCIL**
- (10) WARWICKSHIRE COUNTY COUNCIL**

## SCHEDULE 4

### Conflicts

Fund Name	Administering Authority	Nominated Contact
Bedfordshire Pension Fund	Bedford Borough Council	Section 151 Officer
Cumbria Pension Fund	Cumbria County Council	Section 151 Officer
Durham Pension Fund	Durham County Council	Section 151 Officer
East Riding Pension Fund	East Riding of Yorkshire Council	Section 151 Officer
Lincolnshire Pension Fund	Lincolnshire County Council	Section 151 Officer
North Yorkshire Pension Fund	North Yorkshire County Council	Section 151 Officer
South Yorkshire Pension Fund	South Yorkshire Pension Fund	Section 151 Officer
Surrey Pension Fund	Surrey County Council	Section 151 Officer
Teesside Pension Fund	Middlesbrough Borough Council	Section 151 Officer
Tyne and Wear Pension Fund	The Borough Council of South Tyneside	Section 151 Officer
Warwickshire Pension Fund	Warwickshire County Council	Section 151 Officer

## SCHEDULE 5

### Capital Contribution Letter

[SHAREHOLDER LETTERHEAD]

The Directors  
Border to Coast Pensions Partnership Limited  
5th Floor Toronto Square  
Leeds  
England  
LS1 2HJ

[DATE]

Dear Sirs

#### **Capital Contribution to Border to Coast Pensions Partnership Limited (the "Subsidiary")**

We hereby confirm that [SHAREHOLDER NAME] (the "**Shareholder**") has decided to transfer [the sum of £[AMOUNT]] to the Subsidiary, such transfer being a voluntary capital contribution made by the Shareholder to the Subsidiary (the "**Contribution**"). The Subsidiary shall not issue any shares in return for the Contribution.

The Contribution shall be made subject to the condition that it shall not be credited to the Subsidiary's profit and loss account but shall be credited to a special reserve as part of shareholders' funds. Your acceptance of the Contribution shall be deemed to be an acceptance of this condition.

Yours faithfully

.....  
Director/Officer for and on behalf of [SHAREHOLDER NAME]

## ANNEX

The Participating Authorities have previously dealt with a merger of two of their number, the administering authorities of the Northumberland Pension Fund (“**NPF**”) and the Tyne and Wear Pension Fund (“**TWPF**”) (respectively Northumberland County Council and the Council of the Borough of South Tyneside). The merger of NPF and TWPF established a precedent for participating authority mergers.

It is acknowledged that each process is likely to entail facts and circumstances to be analysed at the particular time.

On the foregoing basis, the Participating Authorities note that:

1. Until any merger is legally completed the shareholder which will be merged into another (the “**Departing Shareholder**”) shall be entitled to remain and shall remain a shareholder in the Company and shall be entitled to retain and shall retain a seat on the Joint Committee established under the Inter-Authority Agreement.
2. The Departing Shareholder will be responsible for its share of costs committed at the date of merger and the Participating Authorities shall use reasonable endeavours to procure that Border to Coast Pensions Partnership Limited (“**BCPP**”) will act reasonably in committing such expenditure, subject at all times to the need for BCPP to proceed in a manner consistent with the diligent development and implementation of its operating model in accordance with the pooling obligations and commitments of the Participating Authorities.
3. If prior to the merger being completed there is a call to subscribe Regulatory Capital for B Shares in BCPP, the other Participating Authorities will discuss with the Departing Shareholder progress of the merger or exit and will determine whether to call upon the Departing Shareholder to contribute at that stage. Any contribution made by the Departing Shareholder shall be on the basis set out in paragraph 6 below, on the understanding that such capital contribution would be refunded as soon as reasonably practicable after completion of the merger.
4. In the event that BCPP has set its Annual Budget and has called on the Participating Authorities for payment of the Annual Operating Charge (both as defined in the Shareholder Agreement) prior to the completion date of the merger it may require payment by the Departing Shareholder of such contribution. If it does so, at the expiry of the quarter immediately following completion of the merger, the Participating Authorities shall procure that the proportion of the charge attributable to the unexpired part of the budget period (from that quarter date) will be refunded to the Departing Shareholder by BCPP and the remaining Participating Authorities agree to make an additional payment to BCPP cover the cost of the said repayment.
5. Notwithstanding the provisions of the Shareholder Agreement and the Inter-Authority Agreement and any notice periods referred to therein, the Participating Authorities agree that they will, in the case of a merger as soon as reasonably practicable after the Departing Shareholder and the authority into which it is merging have advised in writing that it has become unconditional, release the Departing Shareholder from its obligations under the Shareholder Agreement and the Inter-Authority Agreement, provided always that such actions shall not have an adverse impact on the ability of BCPP to operate and in particular to maintain any FCA registration current at the time.
6. On completion of the merger the Departing Shareholder will surrender its “A” share and give up its seat on the Joint Committee. The obligations of the other Participating Authorities shall remain as set out in the Shareholder Agreement (including the provision of replacement regulatory capital). The Departing Shareholder will also be



entitled to the return of any capital subscribed for "B" shares as soon as reasonably practicable in return for the surrender or transfer of those shares in accordance with the Shareholder Agreement, provided that nothing in this letter shall entitle the Departing Shareholder to return of regulatory capital if this would prejudice BCPP's regulatory position in respect of FCA registration or otherwise. Furthermore, the participating authorities agree to consider waiving the provisions of the Shareholder Agreement requiring a 12 month notification period prior to a shareholder exiting the arrangements.

Any Departing Shareholder will keep the other Participating Authorities informed of the timetable for the proposed merger.

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**BEDFORD BOROUGH COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**CUMBRIA COUNTY COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**THE COUNTY COUNCIL OF DURHAM**  
in the presence of:

**Authorised Sealing Officer**  
**(A permanent Officer of the County Council)**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**THE EAST RIDING OF YORKSHIRE COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**LINCOLNSHIRE COUNTY COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**MIDDLESBROUGH BOROUGH COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**NORTH YORKSHIRE COUNTY COUNCIL**  
in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)  
by affixing the Common Seal of:  
**THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE**  
in the presence of:

**Mayor**

**Corporate Lead Legal and Governance/Authorised Signatory**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**SOUTH YORKSHIRE PENSIONS AUTHORITY**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**SURREY COUNTY COUNCIL**

in the presence of:

**Authorised Officer**

**EXECUTED AS A DEED**

(but not delivered until the date hereof)

by affixing the Common Seal of:

**WARWICKSHIRE COUNTY COUNCIL**

in the presence of:

**Authorised Officer**

**EXECUTED** as a deed (but not delivered until dated) by **BORDER TO COAST PENSIONS PARTNERSHIP LIMITED** acting by a director

**Director signature:** .....

**Name:** .....

in the presence of:

**Witness signature:** .....

**Name:** .....

**Address:** .....

.....

**Occupation:** .....

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