

Report of the Director of Governance and Monitoring Officer

Portfolio of the Executive Members for Finance, Performance, Major Projects, Human Rights, Equality, and Inclusion

Yorwaste Limited – Resignation and Appointment of new Director

Summary

1. This report sets out the proposal to appoint a new Council representation on the board of directors of Yorwaste Limited following the resignation of the current City of York Council Officer nominated as Director.

Background

2. The Company was established as a Local Authority Waste Disposal Company owned fully by North Yorkshire Council in 1991 to manage the Council's landfill sites.
3. In 1996, as part of a Local Government Review, the Council became a 22.27% shareholder of the company. The Company provides services to York relating to transfer stations, processing recycling, garden waste and management and transport of waste at the two Household Waste Sites. The Company also provides similar services within North Yorkshire Council.
4. The Company's board of directors is made up of representatives of the two member authorities and also independent board members. The representatives from the Council are currently:
 - a. Cllr R. Melly; and
 - b. the Corporate Director of Place, Neil Ferris.
5. The company is a *Teckal* company under Reg 12(1) of the Public Contract Regulations 2015 (the "**Procurement Regs**") and Schedule 2, Part 1, Para. 2 of the Procurement Act 2023 (also

called “**Vertical Arrangements**”). These provisions under both the Procurement Regs and the Act allow the Council to award Yorwaste long term waste management service agreements on the basis that over 80% of the Company’s revenues come from its local authority owners.

Proposal

6. Neil Ferris has tendered his resignation from Yorwaste with effect from 27th August 2024, which coincides with his leaving date from City of York Council.
7. It is proposed that James Gilchrist – Director of Environment, Transport and Planning is the new Director and Council Officer representative for the Yorwaste Board.
8. Arrangements will be made for James Gilchrist to be formally appointed to the Board following approval of this Committee.
9. In order, however, to expedite such changes in the future, it is proposed that the Committee delegates authority, to appoint any member and/or officer to the role of director of Yorwaste, to the Chief Operating Officer and the Monitoring Officer.

Recommendations

10. Staffing Matters and Urgency Committee is requested to:
 - a. Approve the appointment of James Gilchrist, the Council’s Director of Environment, Transport and Planning, to represent the Council on the board of directors for Yorwaste from and including 27th August 2024, following the resignation of Neil Ferris, the Council’s Corporate Director of Place.

Reasons –

- i. To ensure that meets the requirements of the Control Test under the *Teckal* Exemption under contained under Reg 12(1) of the Procurement Regs and Schedule 2, Part 1, Para. 2 of the Procurement Act 2023.
- ii. Delegate authority to the Chief Operating Officer and the Monitoring Officer to select and appoint any member and/or officer to represent the Council on the board of directors of Yorwaste Limited, and where necessary in the future remove and / or replace said individuals from the board, pursuant to

the Staffing Matters and Urgency Committee's delegated authority under Article 11 of paragraph 5.2 of Article 12 of the Council's constitution and in line with company laws, the Company's articles of association and any agreement between the Company's members from time to time.

- iii. To expedite such necessary changes to the Council's representation on the Yorwaste Board of Directors in the future.

Implications and risks

HR Implications

11. There are no HR implications arising from this report, however, should a conflict of interest arise between the Council and Yorwaste then any appointee of the Council's would need to declare this. Further, any appointee would need to declare their directorship on the Declaration of Interest form.

Financial Implications

12. There are no financial implications associated with this proposal, the officer assigned will not receive any financial payment in addition to the salary to undertake the role of nominated Director for Yorwaste Limited.

Legal Implications

13. Paragraph 5.2 of Article 12 (**Shareholder Committee**) of the Council's Constitution delegates authority to Staffing and Urgency Committee to approve the appointment, dismissal, and terms and conditions of Council Directors, and to recommend such matters to the board of the relevant company.
14. Any decision to appoint, or not to appoint, any particular individual to the board of Yorwaste must be taken with regard to matters set out under (**Guidance to Councillors and Officers Appointed to Outside Bodies**) of the Council's Constitution (in particular, but not limited to, paragraph 2.1 of Appendix 18), with any particular concerns referred to Monitoring Officer before any decision is taken.

15. The appointment by the Council of directors to Yorwaste's board of directors will help to enable Newco to meet the requirements of the *Teckal* Exemption under Regs 12(1), 12(4) and 12(5) of the Public Contract Regulations 2015 requires (*inter-alia*) that:
 - a. Each contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments; and
 - b. For the purposes of (a) above, contracting authorities are deemed to exercise joint control over a legal person where all of the following conditions are fulfilled:
 - i. The decision-making body of the controlled legal person (i.e., the board of directors) is composed of representatives of all participating contracting authorities;
 - ii. The contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person.
16. Schedule 2, Part 1, Para. 2 of the Procurement Act 2023 requires (*inter-alia*) that:
 - a. No person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly); and
 - b. In the case of joint control, each of the contracting authorities is represented on the person's board, or equivalent decision-making body.

Contact Details

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**Chief Officer Responsible for the
report:**

Bryn Roberts,
Director of Governance and
Monitoring Officer

Report ✓ **Date** 13 August 2024
Approved

Specialist Implications Officer(s):

Dan Moynihan – Senior Lawyer (Contracts and Commercial)

Patrick Looker – Head of Finance

Wards Affected:

All ✓

For further information please contact the author of the report

Background Papers: None.

Annexes: None.