

8 March 2024

Our Ref. Cabinet Sub-Committee (Local Authority
Trading Companies' Shareholder) 19
March 2024
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To: Members of the Committee: Councillors Ian Albert (Chair), (Vice-Chair), Keith Hoskins and
Alistair Willoughby

NOTICE IS HEREBY GIVEN OF A

**MEETING OF THE CABINET SUB-COMMITTEE (LOCAL
AUTHORITY TRADING COMPANIES' SHAREHOLDER)**

to be held in the

**COUNCIL CHAMBER, COUNCIL OFFICES, GERON ROAD,
LETCWORTH GARDEN CITY, SG6 3JF**

On

TUESDAY, 19TH MARCH, 2024 AT 5.30 PM

Yours sincerely,

Jeanette Thompson
Service Director – Legal and Community

****MEMBERS PLEASE ENSURE THAT YOU DOWNLOAD ALL AGENDAS AND REPORTS VIA THE MOD.GOV APPLICATION ON YOUR TABLET BEFORE ATTENDING THE MEETING****

Agenda **Part I**

Item		Page
1.	APOLOGIES FOR ABSENCE	
2.	MINUTES - 21 JULY 2023 To take as read and approve as a true record the minutes of the meeting of the Committee held on the 21 July 2023.	(Pages 5 - 6)
3.	NOTIFICATION OF OTHER BUSINESS Members should notify the Chair of other business which they wish to be discussed at the end of either Part I or Part II business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency. The Chair will decide whether any item(s) raised will be considered.	
4.	CHAIR'S ANNOUNCEMENTS Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chair of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest, wishing to exercise a 'Councillor Speaking Right', must declare this at the same time as the interest, move to the public area before speaking to the item and then must leave the room before the debate and vote.	
5.	PUBLIC PARTICIPATION To receive petitions, comments and questions from the public.	
6.	APPOINTMENT OF DIRECTORS TO BROADWATER HUNDRED LIMITED REPORT OF THE SERVICE DIRECTOR – ENTERPRISE	(Pages 7 - 10)
	The purpose of this report is to seek approval to appoint two new company directors to Broadwater Hundred Limited.	
7.	EXCLUSION OF PRESS AND PUBLIC To consider passing the following resolution: That under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting on the grounds that the following report will involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act (as amended).	

8. TRADING COMPANY UPDATE - PART 2 11 - 18
REPORT OF THE SERVICE DIRECTOR – ENTERPRISE

The purpose of this report is to provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress that has been made and to seek approval to commence trading of Broadwater Hundred Property Management Limited so Harkness Court can be let.

9. TRADING COMPANY UPDATE - PART 1 (Pages
REPORT OF THE SERVICE DIRECTOR – ENTERPRISE 19 - 26)

The purpose of this report is to provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress that has been made and to seek approval to commence trading of Broadwater Hundred Property Management Limited so Harkness Court can be let.

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Public Document Pack Agenda Item 2

NORTH HERTFORDSHIRE DISTRICT COUNCIL

CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)

MEETING HELD IN THE COUNCIL CHAMBER, COUNCIL OFFICES, GERON ROAD,
LETCWORTH GARDEN CITY, SG6 3JF
ON FRIDAY, 21ST JULY, 2023 AT 10.00 AM

MINUTES

Present: *Councillors: Ian Albert (Chair), Keith Hoskins and Alistair Willoughby*

In Attendance: *James Lovegrove (Committee, Member and Scrutiny Manager), Ian Fullstone (Service Director - Regulatory) and Jeanette Thompson (Service Director - Legal and Community)*

Also Present: *There were no members of the public present for the duration of the meeting.*

36 APOLOGIES FOR ABSENCE

Audio recording – 1 minute 1 second

No apologies for absence were received from Councillors.

37 MINUTES - 1 MARCH 2023

Audio Recording – 1 minute 5 seconds

Councillor Ian Albert, as Chair, proposed and Councillor Keith Hoskins seconded and it was:

RESOLVED: That the Minutes of the Meeting of the Committee held on 1 March 2023 be approved as a true record of the proceedings and be signed by the Chair.

38 NOTIFICATION OF OTHER BUSINESS

Audio recording – 1 minute 44 seconds

There was no other business notified.

39 CHAIR'S ANNOUNCEMENTS

Audio recording – 1 minute 49 seconds

- (1) The Chair advised that, in accordance with Council Policy, the meeting would be audio recorded.
- (2) The Chair drew attention to the item on the agenda front pages regarding Declarations of Interest and reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

40 PUBLIC PARTICIPATION

Audio recording – 2 minutes 09 seconds

There was no public participation at this meeting.

41 **HERTFORDSHIRE BUILDING CONTROL - AMENDMENTS TO SHAREHOLDER AGREEMENT**

Audio recording – 2 minutes 13 seconds

The Service Director – Regulatory presented the report entitled 'Hertfordshire Building Control – Amendments to Shareholder Agreement', provided an overview of the background to the Cabinet Sub-Committee, and advised that:

- Whilst the shareholder representatives were reviewing the Inter-Authority Agreement and the Service Agreement, it made sense to also include a review of the Shareholder Agreement, which was completed alongside external legal advisors from Trowers and Hamlins LLP.
- From this review there were several changes proposed to be in line with best practice, and a number of areas which could work better.
- Point 8.3 of the report detailed where a unanimous decision of the shareholders was required, with minimal update to this.
- Point 8.4 of the report detailed where a 75% decision of the shareholders was required.
- In addition, there were two new proposals made; a simple majority shareholder decision which would be applied to the paying of dividends, as well as the dismissal of a director for any reason.
- The other new proposal was for a board decision to be included, which would oversee the appointment of specialist consultant. Currently the decision is with the Sub-Committee with no delegated powers, so this would expedite appointments of consultants.

In response to questions from Councillors, the Service Director – Regulatory advised that it was felt that the £50k was a sensible amount of remuneration for consultants to be approved by the Board.

The Service Director – Legal and Community advised that a decision was required today and questioned what further would be achieved by circulating the amended agreement. In response to a question from Councillor Keith Hoskins, the Service Director confirmed that this had been reviewed by other Legal Officers at partner authorities, although some had different ways of approving the decision.

The Chair moved the item to a vote, and it was:

RESOLVED: That the Cabinet Sub-Committee considered the contents of the report and having done so:

- (1) Agreed to the proposed amendments to the Shareholder Agreement.
- (2) Delegated any action required to complete the proposed amendments to the Shareholder Agreements, to the Service Directors for Regulatory and Legal and Community on behalf of the Council as shareholder.
- (3) Authorised the Service Director – Legal and Community to execute the final amended Shareholder Agreement.

REASON FOR DECISION: To enable the Council to deliver its building control service in an effective and efficient manner.

The meeting closed at 10.13 am

Chair

**CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES'
SHAREHOLDER)
19 March 2024**

PART 1

**TITLE OF REPORT: APPOINTMENT OF DIRECTORS TO BROADWATER HUNDRED LTD
(HOLDING COMPANY)**

REPORT OF: SERVICE DIRECTOR – ENTERPRISE

EXECUTIVE MEMBER: EXECUTIVE MEMBERS FOR ENTERPRISE AND THE ARTS

COUNCIL PRIORITY: SUSTAINABILITY AND A BRIGHTER FUTURE TOGETHER

1. EXECUTIVE SUMMARY

1. The purpose of this report is to seek approval to appoint two new company directors to Broadwater Hundred Limited.

2. RECOMMENDATIONS

- 2.1. To approve the appointment of the named officers at 8.3 as company directors for Broadwater Hundred Ltd.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that the Council's company is complying with the company's Articles of Association.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. Not to appoint the new directors, by taking this approach this will put the current company director at risk and will be contrary to the Articles of Association.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member and Deputy Executive Member for Enterprise and the Arts have been briefed on this item.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1. A part 2 exempt delegated decision was taken on 24 March 2020 by the Chief Executive, to establish a holding company for business continuity reasons¹ and following this, the Council incorporated a holding company on 7 May 2020, called Broadwater Hundred Limited (BHL). Two directors were originally appointed to this holding company – one see 8.1, the other was a director who has since retired from the authority and from the office of director to the company.

8. RELEVANT CONSIDERATIONS

- 8.1. Currently there is only one director appointed to Broadwater Hundred Ltd, who is also the Service Director – Enterprise.
- 8.2. As the Company is due to commence trading soon, it is advised that two further directors are appointed. By having three directors this will ensure there is greater resilience.
- 8.3. The two proposed directors of Broadwater Hundred Ltd are Council officers and a supplementary document will be available prior to the Sub-Committee meeting to confirm.
- 8.4. If approved the named individuals will complete the necessary paperwork, which will be sent to Companies House to register them as directors of Broadwater Hundred Ltd.
- 8.5. Both individual will also undertake the appropriate training to ensure they clearly understand the role and responsibilities of a company director.

9. LEGAL IMPLICATIONS

- 9.1. The Council has the ability to act on this Report and its recommendations in accordance with TOR 5.11.4 (g) (iv) which provides that it is able to *“agree to appoint or dismiss (in principle in so far as company ratification is required) any Director of the company (where power is reserved to the shareholder).”*
- 9.2. The Council has authority under the general power contained within Section 1 of the Localism Act 2011 to continue to take steps in relation to the operation of the company (including its financial relationship with the company), having particular regard to the Council’s fiduciary duties.

10. FINANCIAL IMPLICATIONS

- 10.1. The Council will fund the training reference in paragraph 8.5, which will be met from existing training budgets

11. RISK IMPLICATIONS

- 11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.

¹ Remaining exempt under para 3 of Schedule 12A Local Government Act 1972.

- 11.2. Having three Directors will help ensure resilience and should contribute to better governance. This therefore reduces the level of risk.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.2. There are no equality implications in this decision to appoint new Company directors.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 The officers concerned undertake this role having completed a ‘willingness to act’ and in doing so will be covered by appropriate insurance and indemnity. The ‘office’ is unpaid and in addition to their current workload.

16. APPENDICES

- 16.1 None.

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 Companies House link: [BROADWATER HUNDRED LIMITED Company number 12590961](#)

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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**CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES'
SHAREHOLDER)
19 March 2024**

PART 1

TITLE OF REPORT: TRADING COMPANY UPDATE

REPORT OF: SERVICE DIRECTOR – ENTERPRISE

EXECUTIVE MEMBER: EXECUTIVE MEMBERS FOR ENTERPRISE AND THE ARTS

COUNCIL PRIORITY: SUSTAINABILITY AND A BRIGHTER FUTURE TOGETHER

1. EXECUTIVE SUMMARY

The purpose of this report is to provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress that has been made and to seek approval to commence trading of Broadwater Hundred Property Management Limited so Harkness Court can be let. The report also confirms that Broadwater Hundred Limited will also be trading and operating as a holding company.

2. RECOMMENDATIONS

- 2.1. To approve the updated financial projections of the business case and commence trading of Broadwater Hundred Property Management Limited and Broadwater Hundred Limited.
- 2.2. To provide delegated authority to the Service Director – Resources (as Client Lead Officer for the Company), in consultation with the Chair of this Committee to:
 - Agree a loan and a loan amount that will be loaned to either Broadwater Hundred Ltd or Broadwater Hundred Property Management Limited by the Council
 - If required, agree an onward loan to Broadwater Hundred Property Management Limited.
 - Agree that the loans will be governed through a loan agreement, which may give flexibility to each Company to draw-down funds as they are required.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable the Council companies to trade and provide more commercial opportunities which will benefit the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. Not to commence trading of Broadwater Hundred Property Management Limited, by taking this approach this will limit commercial opportunities for the companies.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member and Deputy Executive Member for Enterprise and the Arts have been kept regularly updated.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1. At the Cabinet Sub-committee (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER) held on 15 March 2018 the following was resolved:

- (1) That it be agreed that no further work be undertaken to investigate buy to let investment options; and
- (2) That further work be undertaken to investigate potential conversion/ development opportunities, subject to future consideration of the business plan for specific proposals.

RECOMMENDED TO CABINET: That the principle of setting up a wholly owned holding company and trading companies for the purposes of development; and letting existing and future assets as residential dwellings be approved, and the Chief Finance Officer and Executive Member for Finance and IT be given delegated authority to determine the detail of the structure.

REASON FOR DECISION: To explore the options for making best use of existing assets.

- 7.2. A part 2 exempt delegated decision was taken on 24 March 2020 by the Chief Executive, to establish a holding company for business continuity reasons¹ and following this, the Council incorporated a holding company on 7 May 2020, called Broadwater Hundred Limited (BHL). In an update Cabinet report of 23 June 2020, Cabinet resolved that a business case was to be present to the Sub-Committee for approval.

- 7.3. Following the Cabinet report of 23 June 2020 the business case was developed and a part 2 report was presented to the Sub-Committee on 24 November 2021 seeking approval to commence trading of the holding company and the establishment of a subsidiary company to let Harkness Court. The following was resolved:

RESOLVED:

(1) To approve the business case and agree to commence trading of the holding company (Broadwater Hundred Limited) and the incorporation and trading of a subsidiary company for the purpose of letting out Harkness Court.

(2) To provide delegated authority to the Service Director – Commercial and Service Director – Legal and Community to agree the final company documents (prior to any necessary company approval) and in consultation with the Executive Member for Enterprise, the Arts and Transport to nominate the Directors for the companies.

¹ Remaining exempt under para 3 of Schedule 12A Local Government Act 1972.

REASON FOR DECISIONS: To enable the Council companies to trade and provide more commercial opportunities to benefit the Council.

8. RELEVANT CONSIDERATIONS

- 8.1. Since the above approval, officers have been working on the refurbishment of Harkness Court. Unfortunately, this project has taken significantly more time than originally thought to complete. The main issue was obtaining Building Control approval due to a fire and rescues related issues. However, following a productive site visit with Hertfordshire Fire and Rescue Service, they wrote to Hertfordshire Building Control (HBC) and provided HBC with the confidence that was required to resolve the fire and rescue items. This led to the Council receiving Building Control approval on 17 January 2024.
- 8.2. Following Building Control approval officers from the Council, Broadwater Hundred Property Management Limited and Broadwater Hundred Limited have met to ensure each party knows what needs to be undertaken to ensure the flats can be let.
- 8.3. The updated financial projections for the business case are provided in the part 2 report as it contains commercially confidential information. This document is fundamental and is required for a Local Authority when setting up a trading company.
- 8.4. If the financial projections for the business case are approved the next stage will be to update relevant documents, these include the Articles of Association and the Share Holder Agreement, this will require external legal assistance due to specialist nature and resources. These document updates will be required for both companies. The cost of this has been taken into consideration and the detail is provided in the part 2 report.
- 8.5. Directors for Broadwater Hundred Property Management Limited have been appointed and they have recently undertaken Company Director training. Updates to the directors of Broadwater Hundred Limited are covered as part of a separate report on this agenda.

9. LEGAL IMPLICATIONS

- 9.1. The Cabinet Sub-Committee's terms of reference are concerned with the Council's actions as shareholder of local authority trading companies. The Sub-Committee has within its terms of reference at 5.11.4 (a): *'to represent the Council's interests as shareholder in wholly owned and other companies.'*
- 9.2. Within the Sub-Committee's terms of reference, at 5.11.4 (i), prior to the creation of any wholly or partly owned company: it has a key role, *"to consider options for activities which are for a commercial purpose"* and at 5.11.4 (i) (ii) *"to make recommendation to Cabinet to establish such a company."*
- 9.3. Within the Sub-Committee's terms of reference, at 5.11.4 (h) is "[t]o make recommendations to Cabinet on the investment, **loans**, resource arrangements and asset transfers to companies. The loan referred to in this report is already covered by the Council's Investment Strategy. This has been approved by Council following a referral by Cabinet. The 2023/24 Investment Strategy is referenced in the background papers. In respect of the loan, the content of the 2024/25 Investment Strategy is the same as the 2023/24 Strategy.

- 9.4 Section 1(1) of the Localism Act 2011 introduced the “general power of competence” for local authorities, defined as “the power to do anything that individuals generally may do” and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area.
- 9.5 Section 4(2) of the Localism Act 2011 provides that where, in exercise of the general power, a local authority does things for a commercial purpose the authority must do them through a company.
- 9.6 Section 95 of the Local Government Act 2003 authorises the Council to do for a commercial purpose anything which it is authorised to do for carrying on any of its ordinary functions (other than where it is under a statutory duty to provide that function) however, this power is only exercisable through a company. This is the key power in respect of establishment of a trading arm. There are certain restrictions that may apply to the use of the 95 LGA 2003 power – in basic terms: function-related (section 95(1)(a)); it cannot be for a statutory duty (section 95(2)(a)); it cannot be used if an alternative commercial trading power already exists (section 95(2)(b)); applicable only to relevant authorities (section 95(3)(a)(b)) – ‘formerly referred to as ‘best value’ authorities.
- 9.7 Before exercising this trading power, the authority ‘shall’ support this with an approved business case under The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 no 2393 (para 2(2). The “business case” means a comprehensive statement as to (a) the objectives of the business; (b) the investment and other resources required to achieve those objectives; (c) any risks the business might face and how significant these risks are; and (d) the expected financial results of the business (which should cover the costs of any accommodation, goods, services staff supplied), together with any other relevant outcomes that the business is expected to achieve. Freeths LLP were instructed and have considered the business case and indicated that it meets the legal requirements.
- 9.8 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.

10. FINANCIAL IMPLICATIONS

- 10.1. Financial implications are covered in the part 2 report.
- 10.2. The intention is that the Council will lease the whole of the Harkness Court property to the Holding Company, who in turn will lease it on to the Property Company. The Property Company can then lease each of the individual properties on to individual tenants. The companies will take on the risk of finding tenants, managing the lettings and maintaining the properties. It is forecast that the property company will be able to make sufficient income to cover its costs (including the lease payments to the Council and any interest charges) and make a sustainable level of profit.

- 10.3. Both companies will have some initial costs and will need to have cashflow available before they start generating income. The intention is that the Council will provide a cashflow loan to the Holding Company, who will provide an onward loan to the Property Company. The loan to the Holding Company will be at a market rate. The Holding Company can provide a margin on both the loan and the property lease to ensure that it can generate income to cover its costs. It will be for the Company Directors to determine when it is appropriate to repay any loans.
- 10.4. The above structure is the current intention but may need to change following the receipt of the advice detailed in paragraph 8.4. This is why the delegation in recommendation 2.2 provides flexibility on how the loan from the Council is structured.
- 10.5. Loans made by the Council could fall under the Subsidy Control Act if they are at less than market rate. Even if the loan is at slightly less than market rate, then it would be covered by Minimal Financial Assistance.

11. RISK IMPLICATIONS

- 11.1. Good risk management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. The detailed risks are covered in the part 2 report, as these link to the financial projections of the business case. The property will remain in the ownership of the Council and will be leased to the company. This means that if the company is not successful then the lease will end, and the property will revert back to the Council. For example, the Council could then choose to sell the flats for a capital receipt.
- 11.3. There is an entry on the Risk Register entitled Income Generation, which assesses the risks associated with the Council adopting a more commercial approach. This highlights that even when making informed decisions on pursuing new ventures and realising opportunities, there is a risk of unforeseen issues arising due to a lack of practical experience and historical learning.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no direct equality implications in the setting up of the property company in itself. However, equality law does apply to the provision of goods, facilities or services to member of the public, including the letting and management of properties. As such the property company will conduct the activity of 'finding tenants, managing the lettings and maintaining the properties'. This will include potentially having access information concerning a customer's protected characteristic, taking into consideration the manner of communicating and accessibility needs that disabled people may have, the specific management needs of those who exhibit a protected characteristic and any reasonable adjustments that may be required. The directors of the company will need to complete an equality impact assessment prior to any property lettings.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

14.1. Environmental Impact Assessment has been undertaken. This has demonstrated there are currently no relevant mitigation measures that need to be applied at this point in time, as Harkness Court has recently been refurbished and is the only property in the company, however, there will be the opportunity to investigate renewable energy sources in this facility as and when items need to be replaced.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no direct human resources implications for this report.

16. APPENDICES

16.1 None

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1 *Investment Strategy 2023-24;* <https://democracy.north-herts.gov.uk/documents/s21482/Final%20Council%20Appendix%20A-%20Integrated%20Capital%20and%20Treasury%20Strategy.docx.pdf>

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