



Northumberland

County Council

CABINET

9 July 2019

Advance Northumberland Ltd

Report of Annabel Scholes, Interim Executive Director of Finance

Cabinet Member: Nicholas Oliver, Portfolio Holder for Corporate Services

1. Purpose of report

The purpose of this report is to update members on the transition of the Council's wholly owned company Arch (Corporate Holdings) Ltd. to Advance Northumberland Limited and advise of progress with the operating agreement between the Council and Advance Northumberland Limited.

2. Recommendations

Members are requested to:

- a. note the report;
- b. Consider the Draft Operating Agreement between the Council and Advance Northumberland Limited shown at Appendix A;
- c. authorise the Chief Executive as the Head of Paid Service in conjunction with the Council's Section 151 Officer to finalise the operating agreement;
- d. authorise the Council's Chief Executive as the Head of Paid Service to sign the Operating Agreement on behalf of the Council;
- e. note that Advance Northumberland (Developments) Limited will be run on the basis of a Teckal company;

- f. note the changes to the operation of the loans working group;
- g. approve the following delegated limits for approval of individual loans to Advance Northumberland Limited or any of its subsidiaries, which are within the Council's budget:
 - Up to £1 million - Section 151 Officer (or Deputy) in conjunction with the Portfolio Holder for Corporate Services (or Deputy Leader)
 - Above £1 million and up to £5 million - Chief Executive (or Deputy) in conjunction with the Deputy Leader of the Council
 - Above £5 million - Cabinet
- h. note that if the loans requested exceed the annual allocation in the Council's budget that a report will be produced for Cabinet;
- i. note the next steps.

3. Link to Corporate Plan

The report is aligned to the priorities outlined in the Corporate Plan 2018-21 "A Council that Works for Everyone". In particular the priority "We want to be efficient, open and work for everyone"; specifically, "we want to get the most out of our arms length organisations. We will fundamentally review how Arch, Active Northumberland and Northumberland Tourism work so that they are delivering the right activities and offering value for money, whilst recognising they can access funding that is closed to Councils."

4. Key issues

- 4.1. The transition from Arch (Corporate Holdings) Limited to Advance Northumberland Limited is now complete.
- 4.2. Following a review of the governance arrangements it is proposed to further improve the structures and reporting requirements giving clarity of the roles of the Shareholder, Council as commissioner and Council as the lender. To this end, a draft operating agreement between the Council and Advance Northumberland Limited is attached for consideration (Appendix A).
- 4.3. During the review it was felt that it was appropriate to reconsider the arrangements regarding the governance of loans and a revised process is outlined in the Operating Agreement.

- 4.4. Further work is required to ensure that the Council's Procurement processes are being followed and that contracts awarded to Advance Northumberland Limited are done so using the correct process.

5. Background

- 5.1. At the Cabinet meeting on 23 October 2018 Members agreed to the transition of the Council's wholly owned company Arch (Corporate Holdings) Limited to a newly established company, Advance Northumberland Limited.
- 5.2. The transition took place in the main on 13 November 2018 with all financial transactions taking place in the last financial year.
- 5.3. In order to clarify the role of the Council when it is interacting with Advance Northumberland Limited and ensure that the governance arrangements between the two organisations are robust; the Interim Executive Director of Finance convened a working group of Council officers from the following disciplines: finance, procurement, legal, and regeneration.
- 5.4. The Cabinet is asked to note the clarification of the Council's roles detailed within the draft operating agreement and endorse the implementation of the new agreement. The roles and the principles are defined in clauses 7, 8 and 9 of the Operating Agreement.
- 5.5. In addition to this, the Council needed to consider whether Northumberland County Council and Advance Northumberland Limited and its Group Companies can rely on an exemption set out in Regulation 12 of the Public Contracts Regulations 2015 (PCRs), in order to directly award contracts between the two organisations. This is colloquially known as the Teckal exemption.
- 5.6. Legal advice has been taken and an assessment has been made which on balance states that Advance Northumberland (Developments) Limited is a Teckal company and the Council can directly award contracts to it. This status could change depending on the balance of work commissioned to it from the Council and commercial opportunities. A detailed paper is included as Appendix B explaining the conditions where a Teckal exemption can be applied. The paper also outlines the next steps in this process.
- 5.7. The Section 151 Officer and the Deputy Section 151 Officer also reviewed the paper which was submitted to Cabinet 9 October 2018 entitled "Revised Governance for Loans to Arch". It is now proposed

that further revisions are made to the decision making and governance procedure as follows:

In order to assess the risk on individual loans, the Council needs to analyse a number of factors prior to Advance Northumberland Limited or any of its subsidiaries receiving any loans.

Interest Rates: The process would start with the Council, via the Loans Review Group, setting out an indicative range of interest rates for each purpose - e.g. social housing, affordable housing, market rent etc. Advice is being sought from the Council's Treasury Management advisers (Link Asset Services) to ascertain what a commercial rate for such loans would be. These would then be used by Advance Northumberland Limited or any of its subsidiaries to work up the business case for the Advance Northumberland Limited Board. If the business case is approved by the Advance Northumberland Limited Board, then Advance Northumberland Limited or any of its subsidiaries would apply to the Council for a loan facility. The Council (the Loans Review Group) would examine the business case presented to the Advance Northumberland Limited Board; the minutes of the meeting; and, any state aid advice supplied by Advance Northumberland Limited or its subsidiaries; and then make an offer based on the analysis of the information received.

Core Principles: A number of core principles will apply:

- The Council is not willing to offer a loan facility over 100% of the purchase price of the asset. Loans will no longer fund stamp duty, legal fees, estate agents or valuers fees and fixtures and fittings.
- The Council will hold a legal charge over the asset for which the loan is being granted.
- The Council will review the proposed State Aid solution provided by Advance Northumberland Limited with the request for a loan. A loan will only be approved where State Aid compliance can be achieved, as a result of the loan being issued at a commercial rate, reliance upon other State Aid exemptions, or where the loan for the project does not constitute aid.
- All proposals and requests for loans should include an estimate of loan duration.
- At the end of each financial year Advance Northumberland Limited will supply the Council with a schedule of asset values (the assets are valued annually) and the Loans Review Group

will receive a report which shows the loan to value assessment at that point in time.

- Loans will be assumed to be interest only unless the return on investment allows for a principal repayment; or State Aid rules determine that the loan cannot be interest only; or the Council deems an interest only loan is not appropriate.

Loans Review Group: A Loans Reviews Group to consider the granting of loans will be established consisting of:

- The Cabinet Member for Corporate Services (or Deputy Leader of the Council)
- The Section 151 Officer (or Deputy Section 151 Officer)
- Deputy Section 151 Officer (or Finance Manager)
- The Treasury Management Accountant will act as adviser to the Loans Review Group.

The Group will not be considered quorate if anyone is not represented.

Based on the analysis and recommendations of this Group, a loan offer will be made to Advance Northumberland Limited or its subsidiaries by officers of the Council which the company can then accept or reject.

This process will only apply to new loans and will come into effect once approved by Cabinet.

Implications

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| Policy | This report and Appendices fully supports the priorities outlined in the Corporate Plan 2018-21 - A Council that Works for Everyone. |
| Finance and value for money | The report formalises the governance arrangements and the interactions between the Council and Advance Northumberland Limited. |
| Legal | A draft operating agreement is contained within Appendix A which legally formalises the governance arrangements and the interactions between the Council and Advance Northumberland Limited. |
| Procurement | There are no specific procurement implications within this report. However, Appendix B outlines the conditions regarding the application of a Teckal exemption and outlines the next steps to be considered in this process. |
| Human Resources | There are no specific human resources implications within this report. |
| Property | There are no specific property implications within this report. |
| Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> | There are no specific equalities implications within this report. |
| Risk Assessment | The risks associated with this subject are contained within the report and its Appendices. |
| Crime & Disorder | There are no specific crime and disorder implications within this report. |
| Customer Consideration | There are no specific customer consideration implications within this report. |
| Carbon reduction | There are no specific carbon reduction implications within this report. |
| Wards | All wards. |

Background papers

Cabinet 23 October 2018: Advance Northumberland -Transition from Arch

Report sign off

| | Name |
|--|-----------------|
| Monitoring Officer/Legal | Liam Henry |
| Executive Director of Finance & S151 Officer | Annabel Scholes |
| Relevant Executive Director | Annabel Scholes |
| Chief Executive | Daljit Lally |
| Portfolio Holder(s) | Nick Oliver |

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