



Northumberland

County Council

CABINET

14 JUNE 2018

ARCH TRANSITION AND ESTABLISHMENT OF A NEW COMPANY

Report of: Daljit Lally, Chief Executive

Cabinet Member: Councillor Nick Oliver, Corporate Resources

1. Purpose of report

The purpose of this report is seek approval from Cabinet for the planned closure of Arch Corporate Holdings and the creation of a new replacement company to be known as Advance Northumberland, together with consequential changes to subsidiary companies.

2. Recommendations

It is recommended that the Cabinet approve:

- (i) the closure of Arch Corporate Holdings;
- (ii) the establishment of a replacement Holding Company to be known as Advance Northumberland and associated subsidiaries which focuses on priorities set by the Council in the Corporate Plan;
- (iii) the development of revised governance arrangements that would address:
 - The establishment of an Operating Agreement between the Council and the new company, setting out how the company will deliver the Council's requirements including key performance indicators
 - Reserved matters for the Council
 - The arrangements for formally managing performance and governance;
- (iv) the appointment of the Chief Executive as the Council's shareholder representative for the new company.

3. Link to Corporate Plan

The proposed changes set out in this report directly support the Council's Corporate Plan 2018- 2020 themes – "Thriving" and "Making a Difference"

4. Key issues

- 4.1 The Council, as the owner and sole shareholder of Arch, requires the new company, Advance Northumberland, to be set up in a manner which reflects the priorities contained within the Corporate Plan.
- 4.2 The Independent Strategic Review identified a number of irregularities in the governance and management of Arch which must be addressed in the revised arrangements. The Council also requires assurance that the governance of the new company is robust and has addressed, or is in the process of addressing, all matters identified from the Strategic Review.
- 4.3 A balance is needed between the Council's influence as the sole shareholder and the operational independence of the Company.
- 4.4 The proposed timetable will see the launch of the new Company in June 2018 subject to Cabinet approval, with a staff TUPE transfer planned for July 2018.

5. Background

- 5.1 Following the Strategic Review of Arch, the Arch Board with the support of the Council as sole shareholder, took the decision to move towards closure of the company and the creation of a new company (Advance Northumberland) which has a greater focus on delivering the priorities set out in the Corporate Plan. The creation of the new Company also must address the significant governance issues that were identified within the review.
- 5.2 The Council has asked Arch to develop a transition process that will support the creation of the new structure and deliver the major changes required by the Council.
- 5.3 The Council expects the process to be managed in a manner which minimises costs and exposure to risk involved in creating a new entity. New governance and performance management arrangements also need to be developed that give the Council assurances over failings identified in the review, whilst at the same time getting the balance right between influence and operational independence. Appropriate governance procedures that are in line with the expectations of public sector bodies are required, particularly in relation to:
 - The level of internal audit oversight and assurance
 - The level of oversight and assurance maintained by the Council in relation to procurement controls
 - The level of oversight and assurance maintained by the Council in relation to Health and Safety
 - The role of the Council in evaluating the effectiveness of the Board (including decisions and financial operations)
 - Content and frequency of the reporting for performance to the Council
 - Arrangements for dealing with matters reserved for the Council

5.4 The Company will commission advisors in regards to legal, financial, tax and branding requirements. The Council expects to have sight of any advice provided in relation to these requirements and reserves the right to commission its own advice to ensure that risks are minimised and decision making is fully evidence based.

6. Current position

6.1 The Arch Corporate Holdings Company has been deemed not appropriate to remain as the Northumberland Development Company vehicle for the Council for the following reasons:

- reputational impact;
- its history and constitutional format have had poor governance arrangements;
- The subsidiary format and joint ventures have been developed unilaterally and not on the basis of strategic requirements of the Council's Corporate Plan.

6.2 The Board of Arch Group and the Council recognise that there are significant elements of Arch Corporate Holdings which are aligned to the Corporate Plan of the Council and offer a positive contribution to Northumberland's economic development. The options available to the Council are:

- a) To dissolve Arch Corporate Holdings and bring all development work in-house;
- b) To continue with Arch Corporate Holdings and aim to facilitate improvements in the reputation and governance arrangements to recover the company;
- c) To establish a new development company (Advance Northumberland) for Northumberland.

6.3 It is recommended to establish a new development company for Northumberland to be known as Advance Northumberland which is proposed to be a Limited Company with the Council as sole shareholder.

A timetable has been defined by Arch for establishing the new company. Activity to date (May 2018) is broadly in line with this timetable:

Activity	Date
Arch Board approval for change process	November 2017
Arch Board approval of Transition Plan and PID	January 2018
Appointment of technical, financial and tax advisors	March 2018
Draft Medium Term Finance Strategy agreed	March 2018
Arch Audit Committee established	March 2018
Appointment of brand and marketing advisors	April 2018
Revised Arch Corporate Strategy and MTFS	May/June 2018
Cabinet approval for the creation of the new company	June 2018
Company name announced and established	June 2018
Commence TUPE consultation of staff	June 2018
Staff to transfer to new company	July 2018

6.4 Progress in respect of the Council's assurance requirements is summarised as follows:

- **Progress on addressing the key issues identified within the strategic review** - Work has begun within Arch to address the key issues within the strategic review through the Transition Plan.
- **Costs and exposure to risk**
- **Governance arrangements in line with the expectations of public sector bodies:**
 - The level of internal audit oversight and assurance - new audit oversight arrangements have been agreed with the formation in March of the company's Audit Committee. Reports of the company's Audit Committee will be reportable to Full Council.
 - The level of oversight and assurance maintained by the Council in relation to procurement controls - procurement procedures have been aligned with the Council's own policies and will be tested as part of the internal audit plan.
 - The level of oversight and assurance maintained by the Council in relation to Health and Safety.
 - The role of the Council in evaluating the effectiveness of the Board (including decisions and financial operations) - This will involve ongoing assessment of the company's ability to meet legislative and regulatory requirements at all times, including in the transition process. Initially the assessment will involve ensuring that the company meets the governance requirements set out by the Financial Reporting Council (FRC) on board effectiveness.
 - Arrangements for dealing with reserved matters - in line with normal practice as a shareholder, the Council will require a number of key matters within the Company to be reserved for Council approval and/or decision making.
- **Content and frequency of the reporting for performance to the Council** - arrangements for increased monitoring and oversight of priority regeneration projects, including Enterprise Zone schemes, are being introduced with 'matrix management' arrangements established through the newly defined Economy & Regeneration service. Monthly performance clinics will consider project delivery, budget, delivery challenges and progress towards the achievement of planned regeneration outcomes. Matters requiring attention will be reported to the Council through Portfolio Holder and Cabinet arrangements.
- **Future arrangements are sufficiently aligned to the Council's priorities** - The Corporate Strategy being developed by the Company is being informed by the Council's priorities. As delivery requirements relating to the Council's Economic Strategy are developed in greater detail, an operating agreement between the Company and the Council will be developed and agreed, alongside the monitoring arrangements that ensure delivery of the agreement. In the meantime the Company is a stakeholder within the Regeneration Investment Group formed to manage the Council's regeneration pipeline.
- **Balance between influence and operational independence** - The relationship between Council and Company governance is being redefined. At present the Council occupies four positions on the Company Board. The role of Company Chair is occupied by the Cabinet Member for Economy & Regeneration whilst the Leader and Deputy Leader of the Council are also Board Members alongside

one other Councillor. The Council also participates in project board arrangements for significant regeneration projects in its role as ‘project sponsor’. This is to ensure that the Council’s interests are met and is an appropriate feature of our current arrangements. A further review of governance arrangements will be carried out as part of the establishment of the new company.

7. Conclusion

It is considered given the progress made to date in relation to the issues identified above, that sufficient progress has been made to create the climate and positioning for a new development company to be established with significant officer oversight from the Council.

8. Next Steps and Deliverables

- (i) Revised governance arrangements will be introduced on creation of the new Company (Advance Northumberland).
- (ii) Following creation of the new Company, the plan to transfer assets, staff and contracts to the new company will be implemented during July 2018.
- (iii) The company and the Council will review and agree service level agreements (SLAs) for all support services being provided by the Council, by September 2018.
- (iv) An interim review of the new arrangements will be performed and reported to Cabinet within 6 months of the creation of the new company.

9. Implications arising from the report:

Policy	Delivers the Corporate Plan commitment to review Arch to see whether its investment programme is best for the whole of Northumberland. Recognises the potential for the company to help the Council to deliver a step change in the economy and to help deliver more and better jobs. Seeks to safeguard the delivery of the Council’s major regeneration priorities.
Finance and value for money	The creation of the new company and the subsequent transfer of assets is a complex transaction, and the taxation risk needs to be minimised. The transaction will involve changing equity stakes, the repayment of loans and the transfer of assets. Arch have already commissioned advisors to examine the likely financial consequences, and the Council will also be engaging advisors to ensure that the requisite due diligence can be carried out on the proposed structure and transaction to ensure that there is no detriment to the Council..

	The results of this due diligence will be reported back to Cabinet when as soon as the implications have been fully analysed.
Legal	The proposed course of action will require the necessary processes under companies legislation to be followed to ensure that any transfer of all physical and other assets of the existing company, as well as any all liabilities to any new company are properly effected .
Procurement	the way in which the Council procures services from the new company need to be fromailsied through the operating agreement.
Human Resources	The principal HR issues are to ensure that a TUPE transfer is well structured in line with the law and best practice to enable the new staffing structure to be populated. There may be redundancy implications and costs dependent upon future requirements.
Property	The restructuring of the company will involve the disposal of non core assets. the Council will work with the Company to ensure that the core assets base is aligned with the Council's priorities.
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Needs to be drafted
Risk Assessment	Needs to be drafted formally
Crime & Disorder	n/a
Customer Consideration	As part of the transition plan, customers needs will be considered so the transfer to the new organisation is seamless and has a positive reputational impact.
Carbon reduction	n/a
Wards	Countywide

Background papers:

Arch Strategic Review

Report sign off.

	name
Monitoring Officer/Legal	Liam Henry
Executive Director of Finance & S151 Officer	Barry Scarr
Human Resources	Kelly Angus
Relevant Executive Director	Paul Johnston
Chief Executive	Daljit Lally
Portfolio Holder(s)	Cllr Nick Oliver

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