



Northumberland

County Council

CABINET

DATE: 12.07.22

Advance Northumberland Ltd and its subsidiaries – Request For Reserved Matter Approval

Report of Mrs Jan Willis, Interim Executive Director of Finance and S.151 Officer, and Interim Shareholder Representative

Cabinet Member: Richard Wearmouth, Deputy Leader of the County Council and Portfolio Holder for Corporate Services

Purpose of report

To request formal Shareholder approval of Reserved Matters under the current Articles of Association of Advance Northumberland Ltd (“Company”) and its subsidiary companies Advance Northumberland (Commercial) Ltd, Advance Northumberland (Developments) Ltd, Advance Northumberland (Housing) Ltd, and Advance Northumberland (Finance) Ltd (together the “Advance Subsidiaries”) to:

- I. Adopt new Articles of Association of the Company and the Advance Subsidiaries
- II. Approve a Financial Delegation Policy of the Company and the Advance Subsidiaries, and
- III. Approve the Role Profile for the “Controlling Shareholder Representative”.

Recommendations

Cabinet is invited to:

1. Approve the proposed new Articles of Association of the Company dated “July 2022” as per the attached document at Appendix A
2. Approve the proposed new Articles of Association of each of the Advance Subsidiaries dated “July 2022” as per the attached documents at Appendix B, C, D & E respectively
3. Approve the proposed Financial Delegation Policy dated “July 2022” as per the attached document at Appendix F
4. Approve the Role Profile for the “Controlling Shareholder Representative” as per the attached document at Appendix G

For Cabinet to be aware that on 14th April 2022 the Leader, using his prerogative power under part 4 of the Council’s Constitution, and under section 15 of the Local Government Act 2000 (as amended over time), appointed Jan Willis, the Interim executive Director of Finance, as Shareholder Representative on an interim basis for the reasons as set out in the paragraphs 17 and 18 below.

Link to Corporate Plan

This report is relevant to the “Thriving”, “Enjoying, Connecting” and “How” priorities included in the NCC Corporate Plan 2021-2024.

Key issues

- 1) The day to day running of Advance Northumberland Ltd and its subsidiaries is the responsibility of the Board of Directors, but there are certain matters of corporate governance that cannot be executed by the Directors without the consent of the Shareholder. These matters are known as “Reserved Matters”. The Shareholder of Advance Northumberland Ltd is Northumberland County Council, but the exercise of Shareholder rights and powers is an Executive function and so it is for Cabinet to give approval of “Reserved Matters”.
- 2) This is a request for Cabinet to approve a new set of Articles of Association, the key public governance document, for Advance Northumberland Ltd and all its subsidiaries, which courses of action are “Reserved Matters” for Shareholder approval under the current Articles of Association of Advance Northumberland Ltd and its subsidiaries.
- 3) Following the approval of the new Articles, a new Financial Delegation Policy can then be approved as a Reserved Matter under the new Articles which will provide clarity and guidance on levels of authority on financial and operational matters for the Directors, senior Officers and Controlling Shareholder Representative to facilitate the operations and governance of Advance Northumberland Ltd and its subsidiaries.
- 4) Following the Caller review which highlighted a number of concerns regarding the way in which the Council exercises its role as shareholder, there is a need to

provide clearer guidance on the role of the “Controlling Shareholder Representative” and the manner in which it is exercised.

Background

- 5) On 23rd February 2021, Cabinet approved the current set of Articles for Advance Northumberland Ltd. These were formally adopted by Special Resolution of the Shareholder on 23rd April 2021 and cascaded to all subsidiaries on 16th July 2021.
- 6) Good practice for corporate governance provides for regular review of the Articles, policies, procedures and other administrative and governance documentation. A review of the current Articles has been ongoing for some months to agree a set that both give greater control over the Company than the set of Articles that applied before April 2021, as Cabinet intended in 2021, but which work better at a practical level for all stakeholders.
- 7) Detailed discussions have been undertaken between the Company’s Chief Operating Officer, the Company’s Executive Director, the Group Company Secretary, the Council’s Interim Executive Director of Finance and S.151 Officer, and the Council’s Monitoring Officer & Interim Director of Governance (“Participants”) and a suite of revised articles and linked financial delegations have been arrived at which all Participants feel reflect a more pragmatic balance between Shareholder and Board oversight and control over Company operations.
- 8) The Company’s Board originally approved the body of the revised Articles on 26th November 2021 and delegated authority to the Executive Director to agree the Schedule 1 Reserved Matters list. The Council’s Monitoring Officer requested a minor change to the Schedule 1 Reserved Matters list which was agreed by the Executive Director on 10th December 2021.
- 9) Following the break for Christmas and some clarification requests, a request for Shareholder Consent for approval of the revised Articles was then made to the Shareholder Representative on 24th January 2022.
- 10) In the intervening period, minor revisions to the new draft were proposed and the Company Board approved the final form of Articles dated July 2022 which are attached as Appendix A.
- 11) To ensure consistency across all Advance Subsidiaries, the form of Articles will need to be adopted by all subsidiary companies and they are attached as Appendices B, C, D & E respectively.
- 12) Discussions were also undertaken by the Participants around another key document for both the operation and governance of the Company and Group, to be known as the Financial Delegation Policy.
- 13) This document will be classed as a “Relevant Agreement” under the Articles and links closely with them, setting out more detailed levels of authority and delegations to Company officers than would be appropriate to embody in the Articles since the Articles need a shareholder Special Resolution in order to amend them and are published publicly at Companies House, whereas the Financial Delegation Policy is a private agreement between Shareholder and the Company and can be amended by agreement.

- 14) The document gives clarity on what is or is not a Reserved Matter, provides a mechanism for seeking an opinion on the need for Reserved Matter consent, and the mechanism for seeking Reserved Matter consent from the Shareholder.
- 15) The terms of the Financial Delegation Policy have been approved by the Company Board and now require Shareholder approval as a Reserved Matter. The proposed Financial Delegation Policy dated July 2022 is attached as Appendix F.
- 16) On the 14th June 2018, Cabinet approved the appointment of the Chief Executive as the Council's shareholder representative for Advance Northumberland Ltd and associated subsidiaries.
- 17) Currently, the Chief Executive (CEO) is away from the office and therefore has been unable to act as the Council's shareholder representative and the CEO had not delegated the role to any other officer.
- 18) In the absence of such a delegation and as the appointment was an Executive function and not a matter reserved to full Council, the Leader of the Council, on 14th April 2022, exercising his prerogative under part 4 of the Council's Constitution, and since, under section 15 of the Local Government Act 2000 (as amended over time), Executive functions can be delegated to officers by the Leader or from the Cabinet, Cabinet Committees or an Individual Cabinet Member, delegated the role of the Council's Shareholder Representative for Advance Northumberland Ltd and associated subsidiaries to Jan Willis, Interim Executive Director of Finance and s.151 Officer, on an interim basis.
- 19) These Articles and Financial Delegation Policy were drafted and approved by the Board of Directors before the publication of the Caller Review. It is felt that these documents as currently drafted should be approved as they are certainly an improvement to the current documentation governing the Company. Cabinet should note that further reviews will be undertaken on a regular basis, and certainly to address action 22. of the Action Plan of the Cross-Party Group following the Council's response to address the Recommendations of the Caller Review and the outcomes and contents of the s.144 s.114a reports.
- 20) To assist with the governance arrangements for the Company, a Role Profile for the Controlling Shareholder Representative is set out in Appendix G which will also support action 23. of the Action Plan of the Cross-Party Group in response to the Caller Review regarding the future production of a definition of the relationship between the Council and Council-owned companies and the remit of the Council shareholder.

Implications

Policy	This report outlines information which is relevant to inform the Council's future policies and procedures and its arrangements for its wholly owned subsidiaries.
Finance and value for money	The financial impact of the activities of the wholly owned subsidiaries are carefully monitored in conjunction with the Interim Executive Director for Finance (Section 151 Officer) to ensure that

	activities deliver value for money and ensure that the County Council's financial interests are safeguarded.
Legal	The Council needs to ensure that its wholly owned subsidiaries act within the law and that the actions taken by the wholly owned subsidiaries are in the Council's best interests. Whilst the Council is Shareholder, the exercise of Shareholder rights and powers is an Executive/Cabinet function and so it is for Cabinet to exercise these functions.
Procurement	The Articles and Financial Delegation Policy ensure that procurement legislation and policies are adhered to at all times
Human Resources	n/a
Property	n/a
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	n/a
Risk Assessment	n/a
Crime & Disorder	n/a
Customer Consideration	n/a
Carbon reduction	n/a
Health and Wellbeing	n/a
Wards	all

Appendices attached to this report as follows

Appendix A - DRAFT Articles for Advance Northumberland Ltd July 2022

Appendix B - DRAFT Articles for Advance Northumberland (Commercial) Ltd July 2022

Appendix C - DRAFT Articles for Advance Northumberland (Developments) Ltd July 2022

Appendix D - DRAFT Articles for Advance Northumberland (Financial) Ltd July 2022

Appendix E - DRAFT Articles for Advance Northumberland (Housing) Ltd July 2022

Appendix F - DRAFT Advance Financial Delegation Policy July 2022

Appendix G - DRAFT Role Profile for CSR

Background and related Cabinet reports

- 23rd February 2021 Cabinet – Implementation of Required Governance Improvements in respect of the County Council’s Wholly Owned Company (Advance Northumberland Ltd)

Background papers:

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

	Full Name of Officer
Monitoring Officer/Legal	Suki Binjal
Executive Director of Finance & S151 Officer	Jan Willis
Relevant Executive Director	Jan Willis
Chief Executive’s Office (acting)	Rick O’Farrell
Portfolio Holder(s)	Richard Wearmouth

Author and Contact Details

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