



Northumberland County Council

SHAREHOLDER CABINET COMMITTEE

7 November 2023

Advance Northumberland Review of Articles of Association and Operating Agreement

Report of Jan Willis, Executive Director of Transformation and Resources and S151 Officer

1. Purpose of the Report

- 1.1. To inform the Committee of the work that is currently being undertaken to update the company's articles of association and operating agreement.

2. Recommendations

- 2.1. To note the report.

3. Link to the Corporate Plan

- 3.1. This report is consistent with the priorities in the Corporate Plan 2023-26 "Achieving Value for Money".

4. Key Issues

Articles of Association

- 4.1. The current Articles of Association were adopted by way of Special resolution on 22nd July 2022. They are a public document available at Companies House.
- 4.2. Cabinet, on 13th December 2022, issued its "Council-Owned Company Framework (December 2022)" and approved the principles that "the Advance Board transition to a structure which sees an increase in the number of independent non-executive Directors to make up at least half of the Board, to provide expertise and skill in leading the Company, allowing commercial and operational agility, whilst retaining assurance in respect of the public investment via one democratically elected member Director and one Council Officer Director".
- 4.3. In early 2023 the Company undertook an external recruitment exercise and appointed four new Independent Non-Executive Directors in April 2023. Councillor Jeff Reid was appointed Chair of Advance and, following the appointment of the new Independent Non-Executive Directors, all other Member Directors resigned from the Board. Kelly Gardner and Philip Hunter remained as Council Officer Directors. Group

Executive Director, Robin Earl, and Executive Director of Governance & Sustainability, William Thompson complete the Board.

- 4.4. Following Cabinet's intention to allow the Company greater commercial and operational agility, and with a new Board in place, a review of the Articles has been initiated with the involvement of the Council's shareholder representative, with the intention of providing appropriate freedom to the Board to run the Company on a day to day basis, whilst still retaining the overarching need for Shareholder approval on certain strategic and operational matters.
- 4.5. The Company instructed specialist solicitors to prepare a set of proposed new Articles to reflect most up to date practice regarding company Articles, whilst retaining the requirement for "Reserved Matters" that can only be executed with Shareholder approval.
- 4.6. The initial draft has now been received and example scenarios are being worked up.
- 4.7. One of the key proposed changes to the Articles will be the Quorum provisions. Current Quorum requirements, under Article 16.1, require a majority of Directors to be present but also demand that there must be "... one Member Director and two Non-Member Directors (one of which must be an Officer Director) ..." present at a board Meeting for a quorum to be achieved. This has placed particular pressure on the Chair as the only Member Director and the two Council Officer Directors.
- 4.8. Proposed Article 6.4 provides for a much simpler mechanism, which reflects the new Board composition. There will still need to be a majority of Directors present, but the only further requirement is that at least one Independent Non-Executive Director is present. If the proposed Article 6.4 is adopted, that will enable the Board to be reduced to one Council Officer Director, as had been anticipated by Cabinet in December 2022, without putting undue pressure on the Officer Director to be present at every Board.
- 4.9. The Board has found both Officer Directors' involvement highly useful, insightful and beneficial. It is partly for that reason that there is proposed a novel Article 9, which would allow (though not demand) a named person to be recorded as an "Alternative Director". This would allow for one such person to be nominated and approved by the Shareholder as a substitute for any Director, to enable an otherwise inquorate meeting to go ahead, and keep the benefit of the Officer Director's experience and understanding of the Company.
- 4.10. As the Company is owned 100% by the Council, to simplify the process for Board appointments that remain always subject to Shareholder approval as a Reserved Matter, it is expressly allowable under the proposed Articles that this can be effected by way of letter from the Shareholder, rather than the need for an Ordinary Resolution that is more appropriate to companies with multiple shareholders.
- 4.11. The existing Articles demand the agreement of a Dividend Policy which could restrict the Board's discretion. The proposed new Articles remove this obligation and simply reflect usual corporate practice where the Board can recommend a dividend, if

appropriate, whilst always requiring the Shareholder approval for the payment of a dividend by way of Ordinary Resolution as is the usual law anyway.

4.12. Other than these highlighted matters, there is no material difference between the core text of the proposed Articles and the current Articles.

4.13. As for the “Reserved Matters”, there are currently 52 listed Reserved Matters. Several reflect the position in Company Law and so do not need to be expressly set out. The revised list numbers 37 and, together with the core text of the Articles and the operation of law, reflect the previous restrictions save for the following matters which will no longer be “Reserved Matters” and will only be matters for the Board, remembering always that they must always act in the best interests of the Company:

- Approval before applying to NCC for any loans
- Approval of a Dividend Policy
- Altering the authorised signatories on the bank mandate
- Approval of the Procurement Policy
- Approval of projects that receive grant funding
- Authorising suspension or closure of a building, office or construction site other than for imminent health & safety threat to life or injury
- Material changes to the management and control structure of the Company or Group
- Approving the recruitment and remuneration of Consultants
- Agreeing the remuneration of senior management positions
- Approving pay structures, increases and cost of living pay awards
- Approving increases to pension contributions made by the Company
- Settlement of legal claims below £250,000

4.14. It is the intention that the final form version of the revised Articles will be presented to the Advance Board at its next meeting on 24th November and following their approval, will be submitted to the Shareholder Committee for formal adoption by way of Special Resolution.

Financial Delegations

4.15. Following the approval of the Articles, a refreshed Financial Delegation Policy will be prepared to replace the current version dated July 2022, and submitted to the Shareholder Committee for approval.

Operating Agreement

4.16. The current Operating Agreement was approved in 2020 and for various reasons, is in effect obsolete.

4.17. Despite this, day-to-day interactions between the Company and the Council in the varying roles of Client, Supplier, Funder and Shareholder are now well managed by virtue of strong working relationships and specific documentation reflecting agreed project roles, specifications, funding and governance arrangements.

4.18. There is presently a joint NCC and Advance working group developing a more robust commissioning approach and a new “Commissioning Brief” has been drafted which will be used as the basis for all services and projects commissioned from the company by NCC.

4.19. The Company and Council, together and internally, are working on the future strategy of the Advance Group, reviewing the differing roles of Client, Supplier, Funder and Shareholder, and Advance’s external operations as well as the company and financial structure.

4.20. A new, fresh Operating Agreement or Agreements will be produced for approval by the Shareholder Committee once the differing interactions are agreed and the best structure identified to deliver the strategy.

Policy	None.
Finance and value for money	Effective oversight of Council owned companies is required to ensure compliance with the Council’s best value duty. This includes ensuring that there are up to date articles of association and operating agreements in place.
Legal	As an executive function it falls to the Shareholder Committee to confirm the shareholder’s approval
Procurement	None.
Human Resources	None.
Property	None.
Equalities	None.
Risk Assessment	None.
Crime & Disorder	None.
Customer Considerations	None.
Carbon Reduction	None.
Health & Wellbeing	
Wards	All.

Background Papers:

Report sign off:

	Name
Monitoring Officer/Legal	Stephen Gerrard

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Chief Executive	Helen Paterson
Portfolio Holder(s)	Wojciech Ploszaj

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