



Northumberland County Council

SHAREHOLDER CABINET COMMITTEE

9 April 2024

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 seek the Committee's approval for revised Articles of Association of Advance Northumberland.

2. Recommendations

- 2.1. To approve the revised Articles of Association.

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 remain 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. At its meeting on 7 November 2023 the Committee was informed of the work being undertaken to update the company's Articles of Association and operating agreement. The revised Articles were subsequently approved by the Advance Northumberland Board on 24 November 2023 and shareholder approval is now sought, which must be enacted by way of a special written resolution. The revised Articles are attached at Appendix A to this report.
- 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. Scenario testing has been undertaken to which of those matters that are currently defined as "Reserved Matter requests" would no longer require shareholder approval under the proposed new Articles. There were 46 Reserved Matter Requests in the period since April 2023, of which only 15 would require Reserved Matters Consent - plus a 16th that would still require Shareholder Approval under the Law, rather than through the Articles. Details are included in the attached Appendix B. The reduction in numbers has primarily come from the removal of the need to ask for shareholder consent for:

- seeking loans from NCC
- accepting Grant funding from any source
- any matter regarding the Residential Management Companies set up as part of housing development schemes

- sales of property (as not material).

4.15.As referred to the Notes section of Appendix B, the number of Reserved matters requests will be reduced by identifying the intended projects and associated budget allocations with required approvals and plans in the Business Plan and MTFP. It will continue to be the case that if a new opportunity or project change arises during the year, specific Reserved Matter approval as a departure from the approved Business Plan will be required if the expenditure is above £250k on its own or £500k on a cumulative basis.

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
Executive Director of Transformation and Resources &	Jan Willis

S151 Officer	
Chief Executive	Helen Paterson
Portfolio Holder(s)	Wojciech Ploszaj

Report Author:

Jan Willis, Executive Director of Transformation and Resources

(01670) 624783

jan.willis@[northumberland.gov.uk](mailto:jan.willis@northumberland.gov.uk)

