

North Yorkshire County Council

Shareholder Committee

25 May 2021

Articles of Association for NYnet Limited

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 Purpose

- 1.1 To seek shareholder approval of revised Articles of Association of NYnet Limited.

2.0 Background

- 2.1 NYnet Limited was incorporated on 26 January 2007 as a private company limited by shares, and is a wholly owned subsidiary of the Council. The company was established to deliver broadband connectivity and other internet services across the public and private sector. As part of good governance, the companies and the Council have carried out a review of the governance documents of the company and wish to make a number of changes to incorporate best practice with regard to industry standards with regard to such Council owned companies.
- 2.2 The Company was established with Table A Articles of Association. This report considers bespoke Articles of Association which will assist the Council in demonstrating its control over the Company.
- 2.3 Following on from the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ("the 2020 Regulations"), which allowed for committee meetings to be held remotely, the County Council resolved at its meeting on 5 May 2021 that, for the present time, Committee business should be continued via the Chief Executive Officer making urgent decisions that would previously have been made by the Council's committees. This would be done under his emergency decision making powers in the Officers' Delegation Scheme, following consultation with other Officers and Members as appropriate and taking account of the Committee's views and recommendations.

3. The Teckal Exemption

- 3.1 The Council is a contracting authority for the purposes of the Public Contracts Regulations 2015 (the Regulations). Public contracts must be awarded in accordance with the Regulations; however, there are certain exemptions to this.
- 3.2 One of these exemptions is known as the Teckal test, which is set out in Regulation 12 of the Regulations. The basic test provides that a public contract awarded by a contracting authority to an entity, which is owned by it, falls outside of the procurement rules where all of the following conditions are fulfilled:
- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;**

- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

3.3 The first element of the Teckal test: "*Control*", is established where all of the following conditions are fulfilled:

- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or
- (b) the control is exercised by another legal person which is itself controlled in the same way by the contracting authority.

3.4 One clear way for a shareholder to demonstrate compliance with the 'control' element of the Teckal test is through the requirement for unanimous approval of the Reserved Matters in the Articles of Association.

3.5 NYnet Limited adopted Table A Articles of Association upon incorporation under the Companies Act 1985. Whilst the Company operates within the requirements of the Teckal test and is considered to be a Teckal compliant company, the proposed changes to the Articles of Association mean that the Council can clearly and easily demonstrate that it meets the 'control' limb of the Teckal test outlined above.

3.6 The Articles of Association contained at Appendix 1 are considered to exercise sufficient control over the company to be Teckal compliant.

3.7 On 17 May 2021 the directors of the company resolved to request that the Council as shareholder to pass the Written Resolution to enact these changes. The Written Resolution at Appendix 2 is the formal approval of the Articles of Association by the shareholder, which must be signed and sent to Companies House.

4.0 Recommendation

4.1 The Shareholder Committee is asked to recommend to the Chief Executive that under his emergency delegated powers he:

- (i) Approve the Articles of Association for NYnet Limited; and
- (ii) Agree the Written Resolution be signed by the Corporate Director of Strategic Resources on behalf of the Council as shareholder.

BARRY KHAN

Assistant Chief Executive (Legal and Democratic Services)

13 May 2021

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Appendices:

Appendix 1 - Articles of Association

Appendix 2 –Written Resolution