

# Cheltenham Borough Council

Cabinet – 24 June 2014

## Consultation on a new Management Agreement and proposals to change the composition of the board of directors of Cheltenham Borough Homes

<b>Accountable member</b>	Leader, Councillor Steve Jordan
<b>Accountable officer</b>	Pat Pratley, Deputy Chief Executive
<b>Ward(s) affected</b>	None
<b>Key Decision</b>	Yes
<b>Executive summary</b>	<p>Over the last 6 months Cheltenham Borough Homes (CBH) Board has been reviewing its business plan.</p> <p>The headline outcome from the review thus far has confirmed that CBH is a high performing organisation and is well positioned in terms of local need. What is also clear is that CBH has diversified its operation over the last 5 years as it has successfully moved beyond its core landlord service delivery and achievement of the decent homes standard.</p> <p>The Board has confirmed that CBH's current business plan is sound in terms of its core vision. The Board's desire now is to build upon CBH's robust foundations whilst creating a business model where opportunities can be taken to enhance and expand existing services to meet the needs of the community.</p> <p>There is also a desire, expressed by CBH as well as CBC, to continue to deliver the current new build programme as well as identify further opportunities for developing and delivering affordable/social housing. It will therefore be important for CBH to position itself appropriately to continue to perform as a 3 star ALMO, to build upon its successful new build programme, as well as equipping itself to deliver against an enhanced and exciting diversified service agenda.</p> <p>In light of the above the CBH Board has also been considering its current governance arrangements, including potential changes to its board composition and updating its management agreement, to facilitate/underpin the future direction of travel. Any proposed changes to the board composition and management agreement will need to be consulted upon and this is outlined in more detail in the report.</p>
<b>Recommendations</b>	<ol style="list-style-type: none"><li><b>1. Cabinet is recommended, for the purposes of consultation, to:</b><ol style="list-style-type: none"><li><b>1.1 Endorse the strategic direction of the CBH business plan</b></li><li><b>1.2 Endorse the principle of amending the term and content of the Management Agreement, as outlined in section 3, in order to facilitate the delivery of the CBH and HRA business plans;</b></li></ol></li></ol>

- 1.3 Endorse the principle of reducing the CBH board size from 15 to 10 as outlined in section 4 of the report; and
- 1.4 Endorse the principle of changing the composition of the CBH board to facilitate the delivery of the CBH and HRA business plans.
2. Cabinet is recommended to:
  - 2.1 authorise the Deputy Chief Executive to make early contact with the Secretary of State and to undertake, in conjunction with CBH, consultation with tenants, leaseholders and other stakeholders for a minimum of 6 weeks in relation to the proposed changes to the CBH board and the management agreement.
  - 2.2 Cabinet is recommended to request the relevant Directors from CBC and the Chief Executive of CBH to consider options for further collaboration for sourcing support services over the period of the extended management agreement
  - 2.3 Cabinet is recommended to endorse a further report being brought back to the September 2014 Cabinet on the outcome of the consultation together with any proposed changes before seeking the Secretary of State's consent in accordance with s27 Housing Act 1985.

<b>Financial implications</b>	<p>As per the body of the report.</p> <p><b>Contact officer: Mark Sheldon, Director of Corporate Resources</b>  <b><i>Mark.Sheldon@cheltenham.gov.uk, 01242 264123</i></b></p>
<b>Legal implications</b>	<p>When CBH was set up in 2003, the Council sought and obtained the Secretary of State's consent to enter into a Management Agreement in accordance with s27 of the Housing Act 1985. The legal advisors to CBH, Trowers &amp; Hamlins and One Legal have agreed that such consent is required for the changes set out in this report and have agreed that Tenant consultation will be undertaken to help inform the Secretary of State as part of the consent process. The process requires the council to give the Secretary of State one month's notice of the changes and it is therefore proposed to make early contact with the Secretary of State after this meeting. The tenant consultation can then take place with the intention to bring a report back to Cabinet for final determination. At that time, Cabinet will be informed of any representations made by the Secretary of State.</p> <p>Any changes to the CBH Board composition will also require amendments to the Articles of Association of CBH which will need to be approved by the Leader, as representative of the sole member (the council).</p> <p><b>Contact officer: Shirin Wotherspoon,</b>  <b><i>Shirin.wotherspoon@tewkesbury.gov.uk, 01684 272017</i></b></p>

<b>HR implications (including learning and organisational development)</b>	<p>No direct HR implications arising from the content of this report for Cheltenham Borough Council</p> <p><b>Contact officer: Julie McCarthy</b>  <b>Julie.mccarthy@cheltenham.gcsx.gov.uk, 01242 264355</b></p>
<b>Key risks</b>	<b>See attached risk register</b>
<b>Corporate and community plan Implications</b>	<p>The Council's corporate plan has 5 overall strategic objectives. The role that CBH plays in the community and economy of Cheltenham is reflected in the strategic objectives for both Strengthening our Communities and Strengthening our Economy.</p> <p>As well as its ALMO responsibilities CBH's objectives are firmly rooted in developing communities that both feel safe and are safe and CBH also plays a critical role in people having access to both affordable and decent housing. In turn, residents who live in strong and thriving communities, and who feel able to fully contribute to society in its widest sense, contribute to Cheltenham having a strong and sustainable economy.</p>
<b>Environmental and climate change implications</b>	<p>There are no direct environmental and climate change implications arising from this report. However, the report does identify opportunities for CBH business planning, which includes building new homes and providing high quality, fit for purpose, existing homes to meet housing need. In undertaking these activities CBH will need to take account of the potential environmental and climate change impacts and address them in both design and implementation.</p> <p>The report also proposes changes to Clause 2 of the Management Agreement. To ensure CBH is aligned with the council's response to environmental and climate change issues it is suggested this incorporates reference to the council's objective of enhancing and protecting the environment and the associated outcome of reducing carbon emissions and adapting to climate change.</p>
<b>Property/Asset Implications</b>	<p>There are no direct property implications. Future development opportunities will be reviewed by the joint programme group.</p> <p><b>Contact officer: David Roberts</b>  <b>David.roberts@cheltenham.gov.uk; 01242 264151</b></p>

## **1. Background**

- 1.1** Cheltenham Borough Homes (CBH) has, over the last 6 months, been reviewing its business plan. The headline outcomes so far are that CBH is a high performing organisation and is well positioned in terms of local need. It is also clear that the role of CBH has expanded over the last 5 years and it has begun a successful transformation beyond its core landlord service delivery operation to an organisation which has, with the support of CBC, enhanced and expanded its core services in order to meet the needs of the community.
- 1.2** CBH has now successfully delivered a number of new build developments, eg, Brighton Road, St Pauls Phase 1 and recently successfully completed the first phase of garage sites. CBH is also in the process of delivering St Pauls Phase 2 and has been successful on a number of occasions in securing Homes and Communities Agency (HCA) funding to support new build schemes. The current new build programme continues to be a high priority for CBH and CBC.
- 1.3** There is now a desire, expressed by CBC as well as CBH, to create a pipe-line of development opportunities for the delivery of affordable/social housing to be built through the HRA. CBH is also working closely with the Council's housing enabling and planning teams to understand the Borough's future demand for social housing.
- 1.4** With regard to tenant services, CBH has used revenue investment to enhance its core service provision, eg, through employment initiatives, money and benefit advice, re-engineering its services to tenants following the welfare reforms and, supporting tenants so that they avoid hardship as a result of the reforms to the welfare system. The investment means that CBH continues to perform well with regard to its housing management role and there has been no detrimental impact on services to tenants.
- 1.5** As CBH has been updating its business plan it has been considering the future governance arrangements necessary to underpin a new direction of travel. This report outlines suggested changes to the size and composition of the CBH board as well as proposed changes to the Management Agreement which CBH and CBC believe are necessary to facilitate the delivery of the CBH business plan.
- 1.6** The proposed changes to CBH board composition and the Management Agreement require Secretary of State consent in accordance with s27 of the Housing Act 1985 and consultation with tenants and other stakeholders is not only good practice but a requirement of the HCA with regard to such changes.

## **2. CBH Business Plan**

- 2.1** The CBH Board started reviewing its 10 year business plan in December 2013. There has been an ongoing dialogue with CBC as the business plan refresh has progressed and two workshops with the Council's Cabinet and Senior Leadership Team took place earlier this year.
- 2.2** In summary the feedback from the workshops captured CBC's aspiration for CBH as:
  - 2.2.1** Continuing to deliver and develop its core housing services and maintenance of its housing stock functions to a high standard
  - 2.2.2** Continuing to recognise the potential for CBH to support the Council's commissioning role and local aims
  - 2.2.3** Continuing the new build programmes; and
  - 2.2.4** The potential for CBH to support the broader requirements of social housing need in the future.

- 2.3 In terms of business development the workshops identified the following opportunities for CBH business planning:
- 2.3.1 Building new homes to meet local housing need
  - 2.3.2 Providing high quality, fit for purpose, existing homes to meet housing need
  - 2.3.3 Service development/enhancement opportunities linked to social-economic issues as well as improving health and outcomes for an ageing population
  - 2.3.4 An increased awareness/need to work in a more commercial way
  - 2.3.5 The opportunity to deliver services on behalf of others as well as to customers within a whole community (tenure blind)
- 2.4 CBH have identified 3 strands of strategic delivery as emerging through their business planning process;
- 2.4.1 People – making a difference to peoples’ lives
  - 2.4.2 Homes – providing high quality homes
  - 2.4.3 Communities – shaping strong communities
  - 2.4.4 There is also a developing understanding of what employees think it means working for CBH, ie, a “can do culture”, customer focussed and employer of choice.
- 2.5 The above outlines at a broad level the proposed strategic direction for CBH which will form the basis of the further refinement of its business plan.
- 2.6 As Cabinet is also considering at this meeting the Vision 2020 project, it will be important for Members to consider the future role for CBH in the context of that major transformation project. Furthermore, given the councils overall projected funding gap and pension position of both organisations, there may be potential for CBH and the council to consider how they may collectively address financial pressures over the extended life of the management agreement.
- 2.7 **Cabinet is therefore recommended, for the purposes of consultation, to endorse the strategic direction of the CBH business plan. (Recommendation 1.1)**

### **3. CBH Management Agreement and HRA Business Plan**

- 3.1 The Management Agreement sets out the relationship between CBC and CBH. In March 2003, the council, under s27 of the Housing Act, and with approval from the Secretary of State, agreed that CBH should exercise the council’s powers in relation to housing management and the Management Agreement is the contractual relationship between the two organisations. This agreement was renewed in September 2009 and expires in 31 March 2020.
- 3.2 In view of the proposed strategic direction of CBH with regard to service development and diversification, as well as an ambition for an increased role in the delivery of affordable housing, it is necessary to provide a greater degree of certainty to the CBH Board as to the duration of the Management Agreement with CBC. In addition, as both service and market development have been highlighted as areas for business growth it will be necessary to ensure that the Management Agreement can facilitate the delivery of the CBH business plan and the HRA business plan.

- 3.3 In light of the development of CBH's portfolio of services over recent years, CBH's role as a registered provider (RP) and the requirements placed upon RPs, together with the strategic direction which the business plan will determine, a review of the current Management Agreement has been undertaken and the following changes are proposed following that review:
- 3.3.1 Clause 2 of the agreement which sets the context will need to be updated to reflect the current context to include CBC as a commissioning council, the delivery of outcomes and the strategic needs for housing. Clause 4 which sets out tenant, resident and leaseholder involvement needs to be updated to reflect the new guidance for RPs and to reflect mechanisms already in place for consultation and community involvement. Tenant scrutiny arrangements are now built into the governance arrangements and it is important that this function is fully reflected within the management agreement. Clause 29 should also reflect the new arrangements with regard to complaints and the establishment of the designated panel.
- 3.3.2 CBH is an RP and therefore there are a number of obligations which fall on them through housing inspection. The relevant clauses within the Management Agreement will need to be updated to reflect this role. The Agreement will also need to have new sections for CBH Services which is managing the new build programme. In addition the list of activities included in the associated schedules will need to be updated to reflect any services which have been 'pass-ported' to CBH such as housing options which is currently undertaken via a separate contract.
- 3.3.3 If CBH's work expands beyond HRA activities consideration will need to be given as to the use of surpluses which may be generated by the company. There will also need to be a clause included in the agreement about the consultation with CBC with regard to the location of office premises, to ensure that services continue to be delivered locally to residents.
- 3.3.4 The agreement also needs to be updated to reflect the council's shared service arrangements for the use of support services. CBH use these support services which means that costs can be shared across the two organisations.
- 3.3.5 The council has been taking significant steps to reduce the cost of support services by working with partner councils. The council's accommodation plans provide a catalyst and an opportunity for the council to work together with CBH to improve and further share support services which may deliver savings to both the council and tenants, demonstrating value for money, as well as improving services and service resilience.
- 3.3.6 It is important that this ethos is reflected over the course of the management agreement. As such, it is recommended that the Chief Executive of CBH and the relevant Directors from CBC and CBH consider options for further collaboration for sourcing support services over the period of the extended management agreement.
- 3.3.7 **Cabinet is recommended therefore to request the relevant Directors from CBC and the Chief Executive of CBH to consider options for further collaboration for sourcing support services over the period of the extended management agreement. (Recommendation 3)**
- 3.4 As many of the activities which CBH will be undertaking on behalf of the council are long term ambitions requiring significant investment CBC and the CBH Board would wish to see the term of the Management Agreement extended for 30 years (2044).
- 3.4.1 The current HRA Business Plan runs until 2042 and so there is an alignment on the time period, which will enable a review of the HRA business plan ahead of the Management Agreement coming to an end. However inevitably with such long-term planning there will need to be review periods built into the HRA Business Plan and Management Agreement to ensure that the direction of travel is still fit for purpose given the conditions prevailing at the time of such reviews.

- 3.4.2** Section 27 of the Housing Act 1985 requires consultation to take place with regard to the proposed changes to the management agreement and this is referred to in more detail in the legal implications of this report.
- 3.4.3** Cabinet is only being asked at this time to endorse the principle of amending the term and content of the Management Agreement for the purposes of engaging with tenants and stakeholders through consultation. A further report outlining the results of the consultation process will be brought back in the autumn at which time appropriate recommendations will be made.
- 3.5** **Cabinet is therefore recommended, for the purposes of consultation, to endorse the principle of amending the term and content of the Management Agreement, as outlined in section 3, in order to facilitate the delivery of the CBH and HRA business plans. (Recommendation 1.2)**

## **4. CBH Board Composition**

- 4.1** As a consequence of developing the CBH Business Plan and the proposed future strategic direction for CBH as a company, the CBH Governance Working Group have considered whether changes to the CBH Board composition should be proposed.
- 4.2** In July 2012 Cabinet considered a report regarding the potential for reducing the size of the CBH Board however at that time no reduction in board number or composition was proposed.
- 4.3** The matter has been reconsidered in conjunction with the business planning process and the proposals outlined below therefore reflect the outcome and feedback from discussions held between the Leader, who represents the authority as the sole member of the CBH company (equivalent to a shareholder in a company limited by shares), and CBC Chief Executive in conjunction with the Chair and Chief Executive of CBH. The proposal is:
- 4.3.1** The size of the Board to be 9 members, plus the Chair, so a reduction in total from 15 to 10
- 4.3.2** 2 Council nominated Members
- 4.3.3** A minimum of 3 tenant representatives with the aspiration that 1 of the 3 would be a leaseholder;
- 4.3.4** The opportunity for 2 co-optees (non-voting) at any time – based on business requirements and succession planning.
- 4.4** In recognition of the recent and proposed future diversification of CBH business linked to the emerging Business Plan, and as a product of the maturing overall business, a skills based approach is being taken to Board member roles and responsibilities. It is felt that a reduced size and more flexible composition will enable efficiencies and provide increased focus for the strategic role of Board in steering CBH forward. This is also in accordance with current sector best practice in governance.
- 4.5** Since CBH was originally set up there have been a number of changes to the way that tenants engage with the work of the company, including the establishment of a Tenant Scrutiny Improvement Panel (TSIP) and the designated complaints panel which involves tenants. CBH have also invested significant time and resource into tenant involvement and community development, which enables tenants to have a wider say in the way that services are delivered to them and enables tenants to shape what happens within their own community. Therefore, although the proposals for the board composition will see a reduction in the number of tenants, there are now other mechanisms for tenants to become engaged in the work of CBH.

- 4.6** Changes to CBH's Board composition do not require formal statutory consultation with tenants under the provisions of the Housing Act 1985. However, given the total nature of the proposed changes the legal advisors of CBH and the council have agreed that Secretary of State consent in accordance with s27 of the Housing Act 1985 is required and the Secretary of State expects consultation as part of the approval process. In addition as an RP there are requirements set by the HCA with regard to consulting tenants on board changes. Any changes to the CBH Board composition will require amendments to the Articles of Association of CBH which will need to be approved by the Leader, as representative of the sole member (the council).
- 4.7** CBH's Strategy Committee on 14 May 2014 were updated by CBH Chief Executive on the proposals for external consultation and that consultation would take a broad approach covering three areas; the developing CBH Business Plan, the Management Agreement and the CBH Board size and composition
- 4.8 Cabinet is therefore recommended, for the purposes of consultation, to:**
- 4.8.1 Endorse the principle of reducing the CBH board size from 15 to 10 as outlined in section 4 of the report (Recommendation 1.3); and**
- 4.8.2 Endorse the principle of changing the composition of the CBH board to facilitate the delivery of the CBH and HRA business plans. (Recommendation 1.4)**

## **5. Alternative options considered**

- 5.1** The council could consider amending the management agreement to reflect changes since it was drafted and agreed but to not extend the term. It is felt that this would not secure the longer term planning which CBH may require in order to meet its business and investment needs. The management agreement, as written, does have a clause which allows it to be extended for up to 5 years ie 2025, but again this would not meet the longer term needs.
- 5.2** The council could decide to reduce board membership but to keep the board composition as it is ie equality between the three categories of board members. However this might mean that the membership of the board would not necessarily have all the skills and capacity required to deliver the strategic ambitions for CBH as a thriving and modern company.

## **6. Consultation and feedback**

- 6.1** Cabinet is being asked at this point to endorse the principles of amending the Management Agreement and changing the CBH board composition subject to consultation. Following the consultation process, which will last approximately 6 weeks, a further report will be brought to Cabinet in September. The results of the consultation process, together with any recommendations from the Secretary of State, will be taken into account before any final decisions are taken by the Council.
- 6.2** The purpose of the consultation will be to collect resident and partner feedback on the key identified elements. A broad range of methods will be adopted to capture the views of the diverse resident population and partners in the statutory and voluntary sector in Cheltenham.
- 6.3** Consultation will begin late June 2014 and continue on throughout July. Consultation will be co-ordinated via the CBH Community Services team and CBC Strategy and Engagement Team. Both teams will work closely together to design and co-ordinate the consultation process.



**6.4** CBH Strategy Committee was keen to ensure that the consultation process presented proposals as opposed to a set of agreed items. The committee was also keen that tenants must be given a choice and that consultation could be achieved in the broadest sense. Therefore, a wide variety of opportunities will be used to engage with tenants and other stakeholders, eg, through community events, resident groups, community locations, service delivery contacts and partnership events.

**6.5** The draft consultation plan will be discuss with the relevant Members and will be considered at the CBH board away day on 25 June.

**6.6** Once any decision has been taken to make changes to the Management Agreement and board composition formal consent in accordance with s27 of the Housing Act 19985 will be sought from the Secretary of State who will have a month to approve any proposed changes.

**6.7 Cabinet is therefore recommended to**

**6.7.1 Authorise the Deputy Chief Executive to make early contact with the Secretary of State and to undertake, in conjunction with CBH, consultation with tenants, leaseholders and other stakeholders for a minimum of 6 weeks in relation to the proposed changes to the CBH Board and the Management Agreement. (Recommendation 2)**

**6.7.2 Endorse a further report being brought back to the September 2014 Cabinet on the outcome of the consultation together with any proposed changes before seeking the Secretary of State’s consent in accordance with s27 Housing Act 1985. (Recommendation 4)**

**7. Performance management – monitoring and review**

**7.1** The Management Agreement with CBH is monitored through regular officer meetings and update meetings with the Cabinet lead. The CEO and Chair of CBH meet with the CEO of CBC and the Leader on a regular basis to ensure that company issues as opposed to service delivery issues are dealt with on a frequent basis. The Cabinet lead meets with relevant officers on a frequent basis to discuss CBH operational performance.

**7.2** CBH and CBC senior leadership teams meet twice a year to consider joint strategic issues and these are supplemented with “blue skies” events where the Cabinet, CBC senior officers together with CBH Board and senior officers come together to consider future planning and direction for CBH.

<b>Report author</b>	<b>Contact officer: Pat Pratley, Deputy Chief Executive</b> <i>Pat.pratley@cheltenham.gov.uk; 01242 775175</i>
<b>Appendices</b>	1. Risk Assessment
<b>Background information</b>	n/a

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	If CBH does not have a business plan, setting out its strategic direction, it will not achieve the outcomes the Council wishes to see from its ALMO	Pat Pratley	24.6.14	3	4	12	Reduce	Continue the strategic engagement between CBH and CBC to ensure there is alignment on direction of travel	1.10.14	Paul Stephenson	
2	If the Management Agreement is not up to date then the relationship between CBH and CBC will be unclear	Pat Pratley	24.6.14	3	4	12	Reduce	Update Management Agreement taking account of stakeholder consultation and response from Secretary of State	30.11.14	Pat Pratley	
3	If the proposals for changing the size and composition of the CBH Board are not consulted upon then tenants may feel that their views have not been listened to	Pat Pratley	24.6.14	4	3	12	Reduce	Consultation process should will use a broad range of methods to capture views of the stakeholder groups and give respondents a choice	1.10.14	Paul Stephenson	
4	If the CBH board composition and capacity do not reflect the future direction of travel then the Board may lack the skills necessary to support and challenge the executive team	Pat Pratley	24.6.14	4	3	12	Reduce	CBH Board composition changes have been aligned to the future direction of travel. Job descriptions will be created for all board members	1.10.14	Paul Stephenson	
5	If future opportunities for collaboration on support services are not considered then it may	Pat Pratley	24.6.14	3	3	9	Reduce	Regular dialogue will take place between CBH CX and the Director of Corporate	Ongoing	Mark Sheldon	

	mean that value for money may not be achieved							Resources regarding potential for taking a collaborative approach to sourcing support services			
<p><b>Explanatory notes</b>  <b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)  <b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)  <b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											

**Guidance**

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

**Risk ref**

If the risk is already recorded, note either the corporate risk register or TEN reference

**Risk Description**

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

**Risk owner**

Please identify the lead officer who has identified the risk and will be responsible for it.

**Risk score**

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

**Control**

Either: Reduce / Accept / Transfer to 3rd party / Close

**Action**

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring or new controls or actions may also be needed.

**Responsible officer**

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

**Transferred to risk register**

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on