

Cheltenham Borough Council
Cabinet – 16 September 2014

**Update on CBC/CBH Consultation and Proposals to Update the
CBH Articles of Association**

Accountable member	Leader, Councillor Steve Jordan
Accountable officer	Pat Pratley, Deputy Chief Executive
Ward(s) affected	None
Key Decision	Yes
Executive summary	<p>In June, Cabinet received a report regarding the future strategic direction, and associated governance framework, of Cheltenham Borough Homes (CBH). Among the matters considered was the principle of reducing the CBH Board size from 15 to 10 and also changing the composition of the Board. Cabinet also endorsed, again in principle, amending the term and content of the Management Agreement between CBC (the Council) and CBH to reflect the future focus of CBH's emerging 10 year business plan.</p> <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. Cabinet therefore agreed to the Deputy Chief Executive making 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.</p> <p>This report explains the outcome of the stakeholder consultation and the proposals to amend the Articles of Association of CBH following the responses to the consultation.</p> <p>Regarding the proposals to update the Management Agreement, a small working group of CBC and CBH officers has been established to progress this. A further report will be brought back to Cabinet in December regarding this matter.</p>
Recommendations	<p>I therefore recommend that:</p> <ol style="list-style-type: none">1. Cabinet notes the outcome of the stakeholder consultation process2. Cabinet authorises the Leader to take a decision, by way of a written resolution, to make the necessary amendments to the CBH Articles of Association and any subsequent amendments required by the HCA following CBH's Board meeting on 24 September 2014.3. A further report to agree the proposed variations to the CBH Management Agreement is brought back to Cabinet for approval in December.

Financial implications	<p>No direct financial implications arising from this report</p> <p>Contact Officer: Nina Philippidis Nina.philippidis@cheltenham.gov.uk, 01242 264121</p>
Legal implications	<p>The amendments to CBH's Articles of Association require the approval of the HCA which is currently in hand. As mentioned in the report to Cabinet in June, changes to the Management Agreement will require s27 Housing Act 1985 consent. Early contact has been made with the HCA and formal consent will be sought in due course following the Cabinet meeting in December.</p> <p>Authority to take a decision to amend the CBH Articles of Association has been sought from Cabinet because it is considered to be a key decision. In other cases, the Leader represents the Authority as shareholder or member in a company in which the Authority holds an interest.</p> <p>Contact Officer: Shirin Wotherspoon Shirin.Wotherspoon@teWKesbury.gov.uk, 01684 272017</p>
HR implications (including learning and organisational development)	<p>No direct HR implications arising for Cheltenham Borough Council as a result of the content of this report</p> <p>Contact Officer: Julie McCarthy Julie.McCarthy@cheltenham.gov.uk, 01242 264355</p>
Key risks	See attached risk register
Corporate and community plan Implications	<p>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. CBH also plays a vital role in people having access to both affordable and decent housing as well as creating vibrant and safe communities.</p>
Environmental and climate change implications	<p>There are no direct environmental and climate change implications arising from this report. However, it is noted that building affordable homes in Cheltenham is an important issue for tenants and this, together with other results from the consultation, has been used to inform the updated Articles of Association and will be used to inform the variation to the Management Agreement.</p> <p>It is essential that such affordable housing is built to a high quality standard which addresses environmental and climate change impacts (mitigation and adaptation) in both design and implementation. In addition to delivering environmental benefits such housing will also deliver social benefits, not only through affordable rental and ownership but in providing comfortable living space and also lower running costs, leaving tenants with greater disposable income.</p>
Property/Asset Implications	<p>There are no direct property implications.</p> <p>Contact Officer: David Roberts David.Roberts@Cheltenham.gov.uk, 01242 264151</p>

1. Background

- 1.1 Since the creation of CBH in 2003 the business has gone from strength to strength. Following a Cabinet report in July 2009 a new Management Agreement was entered into covering a 10 year period between 2010 and 2020 to allow for business stability and forward planning. At that time whilst the primary focus for CBH remained as a housing service provider, CBH was also applying to the Housing Corporation (now part of the Homes and Communities Agency (HCA)) to access grant to enable the development of new homes. The new Management Agreement was necessary to reflect this.
- 1.2 Whilst its housing service provider role will always be at the heart of the CBH business, as with any organisation it has sought to develop and grow and to diversify its service provision to meet the needs of its sole member, ie, the Council, its tenants/leaseholders and also the wider community of Cheltenham.
- 1.3 The development of the CBH 10 year business plan is consolidating this direction of travel and has required CBH to consider the fitness for purpose of its governance framework, ie, its Articles of Association, the Management Agreement between it and the Council, and consequently the composition of its Board. To inform the future governance framework for CBH, its tenants, leaseholders and other stakeholders have been consulted.
- 1.4 The purpose of this report is to:
 - 1.4.1 Report the outcome of the stakeholder consultation with regard to the 10 year vision for CBH, service prioritisation, service enhancement and proposals to change the composition and size of the CBH Board (**Section 2**)
 - 1.4.2 Explain the main proposals for updating the Articles of Association of CBH and the process for how this decision will be taken (**Section 3**)
 - 1.4.3 Explain how the feedback from the consultation with regard to the CBH business plan and service enhancement/new service provision will be used to inform the next phase which will be updating the Management Agreement. (**Section 4**)

2. CBC/CBH Consultation

- 2.1 Consultation started 7 July 2014 and concluded on 15 August 2014. The questionnaire was created jointly with input from CBC and CBH officers. The consultation invited CBH tenants, leaseholders and other stakeholders to have their say on 3 important business areas for CBH:
 - 2.1.1 The Management Agreement between CBC and CBH and a proposal to extend the agreement for 30 years.
 - 2.1.2 CBH Board size and composition – the proposal to reduce the number of Board members and appoint future Board members based on the skills needed to meet the growth of CBH.
 - 2.1.3 The development of the new CBH business plan and services for the future which CBH might undertake.
- 2.2 Fieldwork was undertaken during a six week period during July and August 2014. CBH sent a postal version of the questionnaires to all 4,563 CBH households. An online survey was also sent to 420 tenants via email. The online survey link was also made available via the CBC and CBH websites.
- 2.3 Face-to-face consultation took place at community events, coffee mornings, shopping outlets, community/public buildings and CBH/community clubs throughout the six week period. During the final week of the consultation, a number of telephone interviews also took place.

- 2.4 The following sections of this report provide a summary of consultation responses with the full report being provided as a background paper.

CBC/CBH Management Agreement and Proposal to Extend

- 2.5 The table below shows that over nine in ten (92%) respondents agreed with the proposal to extend the Management Agreement to 2044. Only 4% disagree with the proposal.

Response	Percentage of responses (%)
Yes	92%
No	4%
Other*	3%
Don't know	1%
Total	100%

*Could not conclude agree/disagreement based on comment provided.

- 2.6 The themes from respondents who agreed were to recognise that a longer agreement made sense in order to plan for future service delivery. Reference was made to current satisfaction and support for ongoing development.
- 2.7 The main themes from respondents who did not agree were related to their current satisfaction, that the proposal is a long time, that a lot might happen in that time and that a review process should be built into the agreement.

CBH Board Size and Composition

- 2.8 The table below shows that over eight in ten (83%) respondents agreed with the proposal to reduce the size of the Board to 10 members and to change the Board's composition. Only 10% disagreed with the proposal.

Response	Percentage of responses (%)
Yes	83%
No	10%
Other*	5%
Don't know	2%
Total	100%

Base: 885

*Could not conclude agree/disagreement based on comment provided.

- 2.9 The main theme from respondents supporting the proposals was related to modernising the Board and recognising the need to have appropriate skills to perform their role.
- 2.10 The main themes from respondents who did not agree related to the current Board doing a good job so why change it, that any change should not be a cost cutting exercise and the most consistent comment being that tenants and leaseholders should have a place on the Board as they know their communities.

CBH Business Plan and New Service Development

- 2.11 The table below shows that nearly nine in ten (87%) respondents agree with the development of the new CBH Business Plan (services for the future). Only 1% disagreed with the development of the Business Plan.

Response	Percentage of responses (%)
Yes	87%
No	1%
Other*	11%
Don't know	1%
Total	100%

Base: 535 (excluding all zeros)

*Could not conclude agree/disagreement based on comment provided.

- 2.12** The main theme from respondents supporting the proposal was recognition of a broader community role for CBH to support the core housing role.
- 2.13** The main theme emerging from those respondents who did not support the proposal was the opposite in that CBH should focus on being a housing provider.
- 2.14** Respondents were asked to rate nine services in order of importance, with one being important and nine being the least important. As the table below shows, 69% of respondents ranked 'Addressing ASB' in their top three most important services. This is followed by 'Repairs to their Property' (rated in the top three by 46% of respondents). Nearly four in ten also rated 'Improvements to their home' (39%) and Neighbourhood Warden Service (36%) in their top three most important services.

Service	Proportion of respondents rating service in their top 3
Addressing ASB (317)	69%
Repairs to your property (311)	46%
Improvements to your home (312)	39%
Neighbourhood Warden Service (312)	36%
Housing Management (314)	33%
Collecting rent (311)	28%
Support in getting a job (312)	25%
Welfare benefits and money advice (312)	23%
Opportunities to be involved in influencing services (312)	16%

- 2.15** Respondents were asked if there were any services that CBH should provide in the future. The most frequently mentioned services were as follows:
- Repairs/handyman or gardening services (60 mentions);
 - More activities and clubs (15 mentions)
 - Better recycling/rubbish services (13 mentions)
 - More help/support for elderly (10 mentions)
 - Better security/more wardens (8 mentions)
 - More housing (7 mentions)
 - More activities/facilities for children (7 mentions)
 - Better grounds maintenance/gardening services (5 mentions);

- 2.16** Finally, respondents were provided with a list of four 'enhanced services' and asked to rank them

in order of importance now and in the future. The table below shows that building new affordable homes in Cheltenham was the most important service now (48%) and in the future (44%). This is followed by enhanced services for older people (32% ranked this service as number one importance now and 35% in the future).

Service	Now	Future
Building new affordable homes in Cheltenham	48%	44%
Enhanced services for older people	32%	35%
Project activities for young people	21%	20%
Projects and activities to improve health and well being	17%	15%

Base:350-364

- 2.17** The results of the consultation have been used to inform the proposals to update the Articles of Association of CBH and will be considered when work commences to update the Management Agreement which will be brought to Cabinet in December.

Using the Consultation Results

- 2.18** The consultation responses with regard to the CBH Board composition and size have been used to inform the updating of the Articles of Association of CBH (**Section 3**). Response results and feedback relating to the proposals to extend the Management Agreement, CBH Business Plan, new service development and service prioritisation will be taken into account when updating the Management Agreement.
- 2.19** **IT IS THEREFORE RECOMMENDED THAT Cabinet notes the outcome of the stakeholder consultation process**

3. Updating the Articles of Association of CBH

- 3.1** Cabinet may recall that in June it endorsed the principle of reducing the CBH board size from 15 to 10. Regarding the proposals to make changes to the CBH Board composition and size the consultation responses demonstrate support with 83% of those surveyed in favour of the changes proposed. Cabinet will recall that respondents were asked to give their views on:
- 3.1.1** The size of the Board to be 9 members, plus the Chair, so a reduction in total from 15 to 10;
- 3.1.2** 2 Council nominated Members
- 3.1.3** A minimum of 3 tenant representatives with the aspiration that 1 of the 3 would be a leaseholder;
- 3.2** The Articles have therefore been updated to reflect the responses and this is explained in 3.3 below. Officers from CBC and CBH, with the advice from Trowers and Hamlin, have also reviewed the Articles to ensure they are fit for purpose for CBH and its future business direction. This has resulted in an update to the Objects to allow for a wider scope of activity as envisaged by the CBH Business Plan and this is explained in 3.3.1. The opportunity has also been taken to update the Articles for changes in legislation and for other minor drafting matters.
- 3.3** The updated Articles are included as a background paper to this report with the main areas for change being summarised below.
- 3.3.1** **The Objects** – in particular Article 2.3.4 which now refers to CBH “*carrying out any activity which contributes to the regeneration or development*”. This Article previously limited the scope of activity to Cheltenham Borough and has been updated to reflect the aspirations of CBH regarding future development and housing management opportunities.

3.3.2 CIPFA Prudential Code for Capital Finance in Local Authorities – references to repealed legislation have been deleted from Article 2.6.

3.3.3 Number of Board Members – The updated Articles reflect the positive response to the proposal to reduce the size and alter the composition of the CBH Board. It is proposed that Article 14 should read:

“There shall be 10 Board Members, of which

14.1 2 Board Members shall be Council Board Members

14.2 A minimum of 3 Board Members shall be Tenant Board Members, of whom 1 may be a Leaseholder Board Member

14.3 The remaining Board Members shall be either Tenant or Independent Board Members”*

** Note: the definition of Tenant means an individual who holds a secure or assured (as in the case may be) tenancy of a residential property from and occupies a property belonging to the Organisation or Cheltenham Borough Council, or a Leaseholder.*

3.3.4 Appointment of Board Members – whilst it is accepted that it is beneficial to reduce the size of the CBH Board and appoint Board members on the skills needed for the business, it was also felt important that appointment panels should be balanced in terms of representation. Therefore the proposal is that Article 14.5 should stipulate that appointment panels should comprise:

“The Chief Executive of the Organisation (CBH) and up to four current Board Members, one of which must be the Chair, and the remaining members of such panel must include:

(a) At least one Council Board Member

(b) At least one Tenant Board Member

(c) At least one Independent Board Member”

The above process does not relate to Council Board Members who will be appointed in accordance with Article 15 having been nominated as CBH Board Members in accordance with the Council’s Constitution.

3.3.5 Quorum – Article 27.1 proposes that the quorum be reduced from six to five and that to ensure balanced representation that at least 1 Council Board Member and 1 Tenant Board Member (which includes a leaseholder) be present.

3.4 Process for Updating the Articles of Association of CBH

3.4.1 Cabinet is being asked to authorise the proposals to amend the Articles because the decision is considered to be a key decision. In other cases the Leader, as the representative of the sole member (the Council), has authority to take the decision under his retained powers. Therefore, Cabinet is asked to authorise the Leader to take a decision, by way of a written resolution, to amend the CBH Articles of Association subject to any subsequent amendments required by the HCA following CBH’s Board meeting on 24 September 2014.

3.4.2 Members will be aware that CBH is a Registered Provider (RP) and as such there are requirements set by the Homes and Communities Agency (HCA) with regard to consulting tenants on Board changes. The legal advisers to CBH, Trowers and Hamlins, advise that there should be no major impediment to the HCA giving its approval. They base this view in particular on the fact that the Council and CBH have undertaken a robust consultation process. CBH has also asked its Tenants’ Scrutiny Panel (TSIP) to comment on the proposed changes to the Articles.

3.4.3 IT IS THEREFORE RECOMMENDED THAT the Cabinet authorises the Leader to take a decision by way of a written resolution, to make the necessary amendments to the CBH Articles of Association, and any subsequent amendments required by the HCA following

CBH's Board meeting on 24 September.

4. Updating the CBC/CBH Management Agreement

- 4.1** In June, Cabinet also endorsed the principle of amending the CBC/CBH Management Agreement in order to facilitate the delivery of the HRA and CBH business plans. Cabinet also recommended that early contact be made with the Secretary of State, given the total nature of the proposed changes and the fact that when CBH was set up in 2003 the Council sought and obtained the Secretary of State's consent in accordance with s27 of the Housing Act 1985. Early contact has therefore been made.
- 4.2** A small working group of CBC and CBH officers has been established to progress updating the Management Agreement, taking account of responses to the consultation. It is also proposed that both the Tenants Scrutiny Improvement Panel (TSIP) and the CBC Overview and Scrutiny Committee will be asked to be involved in the updating of the Management Agreement.
- 4.3** **IT IS THEREFORE RECOMMENDED THAT a further report to agree the proposed variations to the CBH Management Agreement is brought back to Cabinet for approval in December.**

5. Reasons for recommendations

- 5.1** As explained in the body of the report.

6. Alternative options considered

- 6.1** The Council could have decided to reduce the board membership but to keep the board composition as it was, ie, equally between the 3 categories of board members (Council Board Members, Tenant Board Members, Independant and Leaseholder Board Members). However, this might have meant that the Board would not necessarily have all the skills and capacity needed to deliver the strategic ambitions of CBH. Furthermore the consultation process has now provided comfort that those responding to the consultation see the merit in the proposed changes and the vast majority support the proposal for changing the Board composition and size.

7. Consultation and feedback

- 7.1** Section 2 of this report has summarised the results of the 6 week consultation process. In addition, the CBH Chief Executive is meeting with the TSIP on 11 September to outline the proposed updates to the Articles. An update will be provided to Cabinet.
- 7.2** A members' seminar was held on 3 September and any feedback from that will be circulated to Cabinet in advance of the meeting.

8. Performance management –monitoring and review

- 8.1** The Management Agreement with CBH is monitored through regular officer meetings and update meetings with the Cabinet lead member. The CBH Chief Executive Officer and Chair of the Board meet with the Council's Chief Executive and Leader on a regular basis to ensure company issues are dealt with in a timely manner.
- 8.2** The changes to the Board composition are proposed to be made following the CBH Annual General Meeting in October and the Chair will no doubt undertake a review of how the new Board arrangements are working at a suitable time.

Report author	Contact officer: Pat Pratley, Deputy Chief Executive Pat.Pratley@cheltenham.gov.uk, 01242 775175
Appendices	1. Risk Assessment
Background information	1. CBC/CBH Consultation 2014 – Full Report 2. Articles of Association of CBH as amended

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	The HCA may not give their approval to the changes to the CBH Board Composition	Pat Pratley	16.9.14	4	2	8	Reduce	Advice from Trowers and Hamlin received and robust tenant consultation has taken place	Ongoing	Paul Stephenson		
2	Tenants and stakeholders may not accept the changes to the CBH Board composition and size	Pat Pratley	16.9.14	4	2	8	Reduce	Tenant consultation has occurred and TSIP will be consulted on the proposed changes to the Articles	Ongoing	Paul Stephenson		
3	CBH Board representation may not be achieved in terms of Board selection processes and quoracy	Pat Pratley	16.9.14	4	1	4	Reduce	Relevant Articles have been amended to ensure that Board representation is achieved	30.9.14	Paul Stephenson		
4	The Articles are not sufficiently flexible to enable CBH to deliver its increasing portfolio of services	Pat Pratley	16.9.14	4	1	4	Reduce	The Articles objects have been updated to achieve the flexibility required	30.9.14	Paul Stephenson		
<p>Explanatory notes</p> <p>Impact – 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)</p> <p>Likelihood – 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)</p> <p>Control - 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