

WIRRAL COUNCIL

CABINET

SUBJECT:	WIRRAL PARTNERSHIP HOMES CONSTITUTIONAL CHANGES
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF REGENERATION, HOUSING & PLANNING
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR GEORGE DAVIES
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to inform Wirral Council, as the Council Member of Wirral Partnership Homes (WPH), of proposed changes to WPH's Constitution and to seek support at the Annual General Meeting for those changes.
- 1.2 Following a Governance Review at WPH and WPH Board's approval of the recommendations arising from the review, approval will be sought at the AGM on 20 September 2013 to:
- Reduce the size of WPH Board from its current number of 15 to 12
 - Reserve one-third of the seats on the Board (four) for Council nominees and the remaining two thirds (eight) to be allocated to independents and tenants. WPH is continuing to consult with its Company Members as to the best split of the eight seats between Independent and Tenant Board Directors.
 - Amend Board Directors' terms of office from the current three terms of three-years to two terms of four-years.
- 1.3 The Council is also being asked to agree to the removal by the Company of those Company Members (independent and tenant) who are not engaged with WPH.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 In 2005 the Council's housing stock transferred to Wirral Partnership Homes (WPH). Since then they have met the 89 promises made to tenants at transfer and continued to work in partnership with the Council both on a formal constitutional basis and in informal relationships with many departments across the Council.
- 2.2 The Council have continued to have a presence on the Board of WPH with five elected members taking up one-third of the seats. The Council is also corporately a 'Company Member' of WPH in its registered company capacity with a one-third share of the votes at any General Meeting.
- 2.3 This is important to note as changes to the constitution of WPH require the Council to consider what they wish to do and how to exercise their vote. A General Meeting of WPH would not be quorate without the Council's representative present and he/she must therefore be instructed how the Council would wish them to vote in any particular instance.

- 2.4 WPH is proposing additional changes to its governance however these are matters within WPH's constitution for the board to determine and not the company membership. The current memorandum and articles of association of WPH allow its board to decide whether or not to pay the board members and secondly to delegate any of their powers to any committee consisting of two or more board members together with any such other persons as the Board sees fit. On these matters the board of WPH have agreed to pay the board and that this will be introduced when the new board is in place following the Annual General Meeting in September. A paid chair will also be elected from within the new board of 12 after the AGM. On the second matter the board of WPH have decided to establish a Tenants Committee with a tenant majority which will consist of two board members and seven tenants and residents. To be clear, this is in the remit of the board of WPH and is not a matter for the membership, including the Council, to debate.
- 2.5 WPH is subject to regulation by the Homes and Communities Agency (HCA). The HCA's focus is very much on governance and viability and therefore boards need to have the skills, competencies and diversity to ensure the success of the company. To this end WPH have adopted the National Housing Federation (NHF) Code 'Excellence in Governance'. This is a code for members of the NHF and contains good practice guidance in governance and regulation for the social housing sector. The NHF is the trade body for Housing Associations like WPH.
- 2.6 Guidance in the code relevant to the considerations before Cabinet are that:
- A board should have at least five members and no more than 12, including co-optees
 - For non-executive board members maximum terms of office must be two to three terms with an overall maximum period of board service of no more than nine years.
- 2.7 Members will therefore note that WPH does not comply with the guidance as they have a board of 15 members made up of five Council representatives, five tenants and five independents.
- 2.8 Following adoption of the NHF Code 'Excellence in Governance' in 2010, WPH's Standards Committee reviewed governance arrangements to ensure compliance with the Code. Extensive consultation was undertaken with the Company Members of WPH (the Council, the tenant company members and independent company members). The Board of WPH have now finalised their approach to compliance and are seeking the Council's support for the proposals outlined below.

3.0 WPH GOVERNANCE REVIEW 2012 / 13 - PROPOSALS

- 3.1 The following constitutional changes proposed by the Board of WPH will require approval by the Council and other Company Members at the AGM in September 2013.
- 3.2 **To reduce the number of Board Directors to 12**
WPH currently does not comply with the adopted NHF Code in terms of board size. WPH would be unable to make a reasoned case for retaining its current structure beyond the overriding duty to work within its current constitution. There is clear evidence that smaller boards are more effective in determining strategy and control

and directing the organisation. It is felt that a smaller board would better demonstrate value for money in governance.

3.3 To reserve one-third of the seats (four) for Council nominees and the remaining two thirds (eight) to be allocated to independents and tenants

Through the consultation process to date, officers have advised WPH that the Council would wish to retain one-third of the seats on a future board. If the membership of WPH, including the Council support the proposed change to a reduced board of 12 then this would mean that the Council would have four seats on the board.

3.4 WPH have advised officers that the NHF Code requires them to ensure that outside nominations to their board bring skills and experience that are relevant to the needs of the board. WPH have requested the Council to consider the skills of its nominees when considering future appointments to the WPH Board.

3.5 WPH is continuing to consult with its other Company Members (tenants and independents) as to the split of the remaining eight seats and how best to maximise the necessary skills that a board requires. The current proposal is that there are six independents and two tenants, however it may be possible to achieve the required balance of skills with a different combination. The Council is assured that they will be kept informed of the continuing consultation on this matter and indeed have been invited to attend the proposed consultation events.

3.6 Board Directors' terms of office to be two four-year terms

Whilst WPH currently complies with the NHF Code regarding terms of office for Board Directors (maximum period of board service of no more than nine years), it is felt that a three year term has not proved sufficient to enable individuals to become fully effective. Changing from three year terms to four year terms will also assist WPH with the problems they have experienced regarding continuity. They have had a very high turnover to date having had 50 board directors since the company was formed in 2005.

4.0 WPH GOVERNANCE REVIEW 2012 / 13 – FURTHER CONSULTATION

4.1 WPH has consulted the Council on the proposals outlined in this report. Through discussions between the Council's executive and senior officers and WPH's Chair and Executive it is felt that the proposals represent the best interests of the Council and the future sustainability of WPH. It is important to note that as stated above the Council only has one-third of the membership of WPH and cannot carry through any changes in its own right. The other two elements of the membership need to be consulted and vote on proposed changes.

4.2 WPH has therefore arranged a series of three Company Member consultation events (one each in February [held on 13 February], March and April) to which all Company Member groups have been invited. WPH officers are explaining the proposals and attendees have the opportunity to discuss these in further detail and ask questions. By the final meeting there will be a clear indication of the level of support for the proposals. These meetings also represent a chance for those Company Members who have not previously engaged with WPH to show their commitment by re-engaging with the Company.

- 4.3 To this end WPH have asked the Council to consider in principle at this stage whether or not they would support a further proposal in improving WPH's governance arrangements. That is to remove a number of company members (independent and tenants) who have applied to become company members but who play no part in the furtherance of social housing through WPH within Wirral. This is one of the requirements of the WPH company membership policy.
- 4.4 Since transfer, WPH have actively encouraged tenants to become members of the company, there are currently 66. However, many of them do not actively participate either in the role of company member or in any other way with WPH. There are a significantly smaller number of independents, seven as they are made up of current and former independent board directors. One or two of the independent members now no longer engage with WPH.
- 4.5 WPH has always had an 'open' Company Membership i.e. tenants and independents are actively encouraged to take a stake in the Company. Each year formal invitations are sent to each Company Member to attend the Annual General Meeting, the Company Members' Luncheon and consultation events such as those currently being held to explain the governance changes.
- 4.6 An issue raised by engaged Company Members is the lack of attendance and participation in Company business by certain other tenant and independent Company Members. Since 2004, there have been thirteen formal occasions to which tenant and independent Company Members have been invited, to offer their views on the past progress and future direction of WPH – vital input to the Board in setting strategy.
- 4.7 Of the tenant and independent Company Membership, 16 members have not attended or sent in a proxy vote since 2009 – practically one third of the tenant membership. Thirteen of those Company Members have never attended the formal meetings which commenced in 2004.
- 4.8 This represents a risk to WPH, the Council and active company members interests in making constitutional changes in that major constitutional change requires that 75% of all members are in favour of those changes. Members can vote at a General Meeting or send a proxy vote in order to express their opinion. However, non-attendance or not using a proxy means that those votes are considered to be 'not in favour' of the changes which could undermine the votes made by those actively engaged with the Company.
- 4.9 This matter was raised at the first consultation event held by WPH for Company Members in February and those present felt that following extensive communication with individual company members in writing, by telephone and personal visits and the invitation to attend one of the three current consultation events, should they still not engage then the wider membership should consider their removal as company members. The only way that this can be achieved is through a General Meeting. It is felt that this would be best held at some point before the Annual General Meeting in September and it is likely that it would be in June. The Council are being asked if they would be prepared to attend a General Meeting to consider this matter, it would not be quorate if the Council does not attend and secondly to vote in favour of the removal of individual Company Members by the Company should they not meet the requirements of company membership. WPH is contacting those of its membership

who now no longer actively participate to ask them to consider their positions. The individuals concerned will be given due notice of any such meeting and may attend the General Meeting and petition to remain members of WPH, by explaining any extenuating circumstances which should be taken into account before the consideration of their continued Company Membership.

5.0 RELEVANT RISKS

5.1 The Council is a Company Member of WPH holding one-third of the membership therefore it is essential that the Board of WPH is fit for purpose, in order to ensure effective decision making mitigating any risk to the Council's reputation and interests in the Company.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 Representatives or individuals from voluntary, community and faith groups may apply for independent positions on the WPH Board, or tenant positions if they qualify as tenants or leaseholders of WPH.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 None

8.0 LEGAL IMPLICATIONS

8.1 None

9.0 EQUALITIES IMPLICATIONS

9.1 None.

9.2 This is not a Council service or policy, however an Equality Analysis has been carried out by WPH which is attached for members consideration.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 None

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 None

12.0 RECOMMENDATION/S

12.1 Cabinet is recommended to:

- Agree to the recommendation to reduce WPH Board to 12 members;
- Agree to the recommendation to reserve one-third of the seats (four) for Council nominees and for the remaining two thirds (eight) to be allocated to independents and tenants subject to the outcome of the consultation process outlined in this report
- Agree to the recommendation to amend WPH Board Directors' terms of office to two terms of four-years;

- Agree that the Council considers the relevant skills and experience of its representatives when making its appointments onto the board of WPH. Members should note on the subject of remuneration, WPH are offering payment to all Board Directors, including Councillors, however, it is up to individual Board Directors and specifically regarding Councillors it would also be subject to Wirral Council's own policy, as to whether the payment is accepted.
- Subject to the outcome of Company Member consultation, agree to support the removal by the Company of those Company Members who are not engaged with WPH, such individuals to be named in the Notice of the General Meeting; and
- Cabinet are requested to note that these changes will also require changes in the drafting of the memorandum and articles of association of WPH, its constitution. Officers are therefore seeking permission to vote on those changes at WPH's AGM in so far as they are associated with the proposals above.

13.0 REASON/S FOR RECOMMENDATION/S

- 13.1 That Wirral Council, as the Council Member of WPH, indicate their agreement to the proposed governance changes prior to presentation at WPH's AGM on 20 September 2013 and to the proposed removal of those Company Members who are not engaged at a General Meeting to be held in June (precise date to be agreed).

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APPENDICES

WPH Equality Analysis

REFERENCE MATERIAL

Email correspondence with WPH
 NHF Code Excellence in Governance

SUBJECT HISTORY (last 3 years)

Council Meeting	Date