

Report

Cabinet



Part 1

Date: 13 September 2017

Subject **Newport City Homes – Proposed Governance Changes**

Purpose To consider a request from Newport City Homes for consent to change their internal Rules and to make recommendations to Council regarding the proposed new governance arrangements.

Author Head of Law and Regulation

Ward General

Summary The Council has been requested by Newport City Homes to formally approve proposed changes to its Rules of procedure and internal governance arrangements.

NCH take the view that the proposed Rules changes are necessary to provide a more robust, modern and flexible governance framework to enable the organisation to develop and to ensure a sufficient degree of legal independence

These proposed changes will require the Council to relinquish its one-third voting rights, as shareholder, and also its rights to appoint three local authority Board members.

If the proposals are agreed, then it will be necessary to resolve that the Council's block vote shall be exercised in favour of the proposed special resolution, whether in person or by proxy, at a Special General Meeting of NCH convened for this purpose. It will also be necessary to make the changes to the original stock Transfer Agreement by entering into a Deed of Variation.

Proposal **That Cabinet consider the proposals and make the following recommendations for adoption and ratification by full Council:-**

- (a) **that the Council consents to the proposed changes in governance arrangements;**
- (b) **that the Council approves the proposed amendments to the Rules to implement these governance changes;**
- (c) **that the Council's corporate vote be exercised in favour of the proposed special resolution, whether in person or by proxy, at the Special General Meeting of Newport City Homes convened for this purpose;**
- (d) **that the Head of Law & Regulation be authorised to agree and complete a Deed of Variation to the stock Transfer Agreement, to reflect these changes.**

Action by Head of Law & Regulation

Timetable Immediate

This report was prepared after consultation with:

- Leader of the Council
- Chief Executive
- Cabinet Member for Regeneration & Housing
- Head of Finance

Signed

Background

1. Newport City Homes (“NCH”) was established on the 9th March 2009 to take a transfer of the Council’s housing stock, with a commitment to implement improvement works to achieve the Welsh Housing Quality Standard and deliver enhanced services to tenants, as set out in the Council’s Offer Document and reflected in the Transfer Agreement. NCH was set up as a registered social landlord and an industrial and provident society with charitable status. However, the Model Rules of the National Housing Federation adopted at that time were intended to provide sufficient flexibility to allow NCH to evolve into a tenant-orientated organisation in the future, in line with the “Bridge model” recommended by the Newport Housing Commission.
2. There was a commitment by NCH in the Transfer Agreement with the Council to develop the Bridge Model in accordance with the pledges given to the tenants in the Offer Document and pre-transfer ballot. In addition, NCH agreed to consider adopting the Community Housing Mutual form of constitution after 5 years, with the tenants (and other eligible members of the community) being "members" of the organisation and exercising collective control and management of the assets. Other commitments were given, in the meantime, in terms of tenant empowerment and development. Therefore, the intention has always been to give tenants greater involvement in the management of NCH and for the governance arrangements to evolve over a period of time.
3. The Council remains a founder member and shareholder of NCH, with weighted voting rights and also nominates individuals to serve on the executive management Board. Therefore, the Council retains an interest in the operation of the NCH, but it cannot have a controlling interest because NCH is required to operate at “arm’s length” and independently of the local authority, as required by the Welsh Government which regulates NCH and all other housing associations in Wales.
4. The Council currently has one-third voting rights at shareholder meetings of NCH. Although this does not give the Council overall control, these 33% block voting rights effectively give the Council a right of veto over major decisions affecting the constitution and operations of NCH because these changes would require a special majority of 75%.
5. In addition, the current Board comprises a maximum of 15 members. This was originally made up of 5 Independent members, 5 tenant board members and 5 Council nominees. However, in 2011 the Council reduced its nominees on the Board from 5 to 4 and, subsequently in 2012 agreed to reduce this to 3 Council nominees, to facilitate an increase in tenant representation, consistent with the Housing Commission’s Bridge Report. The three current Council Board members are Councillor Mudd, Councillor Holyoake and former councillor Val Delahaye.
6. In addition to the Council’s weighted voting rights which provide an effective veto in relation to major Rule changes, the Transfer Agreement between the Council and NCH also provides that there cannot be any change to the organisation’s objects, powers or representation without the Council’s prior written consent. This was, again, intended as a further safeguard in ensuring that NCH met their commitments to the tenants and the Council set out in the Offer Document and the Transfer Agreement.
7. The NCH Board has adopted an open and accountable process for the election of tenant and independent members. In the case of tenants, candidates are put forward in a ballot to all households. On a similar basis all share members (now totalling some 1,500, the majority of whom are tenants) have the opportunity to vote for independent candidates. Those candidates who attract the highest number of votes are ratified at the Annual General Meeting and elected to serve on the Board. The Council has previously agreed that, in relation to the appointment of independent and tenant Board members, the Council’s single share counts as one vote and the weighted provisions do not apply.
8. Proposed changes.

NCH have now submitted a request for the Council to

(a) approve the following Rule changes:-

- the removal of the Council's one-third weighted voting rights, so that in future the Council's single share will only count as one vote;
- the reduction in the number of Board Members from 15 to 12 and the removal of the requirement for constituent groups (that is, tenant, independent and Council representatives);
- in future, there will be one type of ordinary shareholder and one type of Board Member;
- the composition of the Board would allow for the co-option of up to 3 other members, who can bring specific skills and experience to the role.

(b) agree to amend the commitments in the Transfer Document in relation to the "Bridge Model" of governance and to remove the need to obtain Council consent to any future Rule changes.

9. Reasons for the proposed changes.

Having delivered on the promises made at the time of the stock transfer, NCH are now working with partners to further develop the association and continue to improve services. The NCH strategic plan ("2020 Vision") sets out their ambitions for the next three years and the Board has identified the need to improve their existing governance framework in order to meet these objectives. The current Rules are considered to be too restrictive in relation to the way in which NCH need to carry out their business. Although their current Rules were fit for purpose at the time of the initial stock transfer, they have now become outmoded and are no longer flexible enough to meet future needs.

10. The NCH Board and executive team have identified the need for change and, over a long period of time, have discussed with residents how they can connect better with the board and the wider association. This discussion has confirmed the need for urgent changes to the current Rules, together with a change to the size and shape of the board to a single-status board of up to 12 members including co-optees (individuals who can bring specific skills and experience to support the board for a specific period of time). The NCH board has also confirmed the need for effective resident involvement to inform the organisation's strategic, corporate and operational decision-making.
11. In addition, a recent decision by the Office for National Statistics ("ONS") to reclassify registered social landlords as public bodies has resulted in the Welsh Government consulting on legislative changes to allow the ONS to reverse its decision. The consultation asked for people's feedback on a range of issues such as the Welsh Government's enforcement powers over housing associations and the ability for local authorities to place council nominees onto the boards of large-scale voluntary transfers (LSVTs) such as NCH. Similar changes have already been put into practice in England, and it is expected that the Welsh Government may consider introducing similar actions to deal with the ONS's decision for Welsh housing associations. Any action taken in this respect would affect the existing Rules.
12. Therefore, NCH take the view that the proposed Rule changes are necessary to provide a more robust, modern and flexible governance framework to enable the organisation to develop and to ensure a sufficient degree of legal independence.
13. The proposed Rule changes fall into three broad categories:-

- (a) Updating the Rules to the latest version of the Community Housing Cymru Model Rules 2017;
 - (b) Updating the Rules to reflect the way in which NCH would like to improve existing governance arrangements;
 - (c) Administrative changes
14. Community Housing Cymru is the national representative body of housing associations in Wales. This review ties in with the release of their 2017 Model Rules which have been approved by the Welsh Government and the Financial Conduct Authority as suitable for Welsh registered social landlords. Most housing associations in Wales have adopted these Model Rules and, by following these Model Rules NCH would be fully keeping to the law, best practice and regulatory expectations. The current NCH Rules are based on an old version of the Model Rules (from 2005) which are now out of date. These recommended changes are important to make sure that the NCH governing document is up to date and in line with changes to the law and best practice.
15. As far as possible, NCH have followed the standard provisions in the 2017 Model Rules, except that they have included the option to include co-opted members on the board, as this is considered to be a useful way to increase the range of skills on the board, as required from time to time.
16. By introducing the 2017 Model Rules, the NCH board has decided to streamline their governance arrangements by reducing the number of board members from 15 to a maximum of 12 and to remove the requirement for constituent groups (tenant, independent and council nominees). This removes the need for different groups of shareholders and board members. Instead, there will be one type of ordinary shareholder and one type of board member.
17. There are also a number of Rule changes that are purely administrative in nature, for example, updated references to legislation and terminology and the removal of unnecessary clauses that related to the initial set-up of the organisation, to reflect that NCH are now an established housing association. Council consent would not be required for these minor administrative changes.
18. The proposed Rule changes, and a new governance approach, have also provided the NCH board with an opportunity to involve residents in creating a new Resident Engagement Strategy, which NCH will launch at the end of the year. The NCH board have re-affirmed their belief that resident scrutiny is the corner stone of good governance, and allows residents to help set priorities, identify areas for improvement in performance and influence the strategic decision-making of the organisation. The board has identified the need for a stronger connection with residents at a strategic, corporate and operational level and believe that these governance changes will help to facilitate this improved engagement.
19. Impact of the Rule changes for the Council
- If it agrees to the proposed changes, then the Council would be relinquishing all control, at both Board and shareholder level, and would have no direct influence over the future direction of NCH. Although the Council would remain as a founder member and shareholder of NCH, it would no longer have weighted voting rights and no effective veto over critical decisions. It would only have one ordinary share and one single vote at meetings of shareholders, as opposed to the current one-third block vote. In addition, any future Rule changes would not require prior Council approval.
20. Also, the Council would no longer have the right to nominate any specific number of representatives to serve on the Board. As there would be no different category of board members, all 12 members would, in future, be appointed by the board, based on the need for their specific skills and expertise.

21. Therefore, if the Rule changes are approved, both by the Council and by the other members of NCH, then the Council representatives would cease to be local authority nominated members of the Board. Councillor Holyoake and Mrs Val Delahaye would cease to be board members as soon as the changes were approved. However, under the new board appointments being recommended to the next Annual General Meeting of NCH on 21st September 2017, Councillor Mudd would continue to be a member of the board, albeit that she would continue to serve in a private capacity because of her personal expertise and not as a local authority appointed representative.
22. However, the Council has previously agreed to similar governance changes in relation to the Newport Housing Trust, to facilitate its merger within the Seren Group, and has also reduced its involvement within NCH since the original transfer, through the reduction in board membership from 5 to 3 and the removal of weighted voting for the appointment of other board members. Therefore, the principle of the Council withdrawing from direct involvement in the management of these housing associations has already been accepted and established. Most shareholder decisions do not require a special majority vote and the Council now has only 20% of the voting rights at board level, so has very little control in practice at both a strategic and operational level.
23. Originally, the Council required one-third weighted voting rights and board membership following the stock transfer as a safeguard during the transition period, to ensure that NCH met their pledges to the tenants and the commitments given in the Transfer Agreement. It was necessary for the Council to have greater influence over the internal governance arrangements at that time because of the need to meet Welsh Housing Quality Standards. However, the strategic vision for NCH has now changed, with greater emphasis on housing regeneration and development projects, such as in Pillgwenlly and Ringland. Therefore, the Council does not need to have the same degree of control and influence over the internal governance of NCH and there is more of a requirement for the organisation to operate independently of local authority control. However, the Council would continue to work in partnership with NCH, as with the other RSL's, in terms of wider strategic housing and regeneration objectives. It would also be open to the Council to continue to scrutinise the performance of NCH, as a PSB partner, through the Scrutiny Committee process.
24. Although the original Rules when NCH was first established were fit for purpose at that time, they have since become outmoded and a more flexible governance structure is now required to comply with the new Model Rules and to enable NCH to operate as a modern, forward-looking RSL. The commitment in the Transfer Agreement to the "Bridge Model" and the Housing Community Mutual organisation has been overtaken by events because NCH is now an established RSL with over 1500 tenant/shareholders. Therefore, these obligations no longer fulfil any useful purpose and can be removed. In addition, it is likely that legislation will be forthcoming to reverse the impact of the ONS decision and to preserve the legal independence of housing associations from public sector control, including the removal of "golden share" weighted voting rights. Therefore, these Rule changes are necessary to give NCH the flexibility to adapt to any new legislative requirements.
25. Cabinet is, therefore, required to consider the proposals and make recommendations to full Council as to whether or not the governance changes should be agreed. If the proposals are agreed, then it will be necessary to resolve that the Council's block vote shall be exercised in favour of the proposed special resolution, whether in person or by proxy, at a Special General Meeting of NCH convened for this purpose. It will also be necessary to make the changes to the Transfer Agreement by entering into a Deed of Variation.

26. **Financial Summary**

There are no financial or cost implications arising from the proposals

27. Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
If the Council refuses the request to vote in favour of the governance changes, this could affect the future direction and development of NCH and its ability to adapt to changes in legislation.	H	H	By relinquishing control, the Council would allow NCH to modernise its governance arrangements and provide greater flexibility and expertise at board level	Cabinet/Council
By relinquishing its one-third weighted rights as members NCH and rights to appoint Board Members, the Council would have no direct influence over the future direction of the Trust	L	H	The loss of direct control or influence over the operational management of NCH can be mitigated by developing a more strategic arm's length partnership relationship, by reinforcing existing external Scrutiny arrangements	Cabinet/Council and relevant Heads of Service

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The development of strategic partnership working with NCH will help to deliver Well-being and Corporate Plan objectives in relation to building cohesive and sustainable communities and promoting economic growth and regeneration.

Options Available and considered

The Council has the option of

- (a) Agreeing to the proposed Rule changes and new governance arrangements, or
- (b) Not agreeing the proposed Rule changes and new governance arrangements.

Preferred Option and Why

The preferred option is Option (a). If the Council refused the request to vote in favour of the governance changes, this could affect the future direction and development of NCH. Therefore, to enable the Trust to continue to operate effectively and to improve services to tenants, the Council needs to relinquish control. The loss of Council control at member and Board level can be mitigated by more rigorous

scrutiny and by strategic partnership working. The Council has already acknowledged that its involvement in the day to day operational management of NCH has reduced significantly since it was first established and previous governance arrangements have already been relaxed. Therefore, this is a natural extension of that process.

Comments of Chief Financial Officer

There are no financial implications.

Comments of Monitoring Officer

As set out in the report.

Comments of Head of People and Business Change

As the report outlines, Newport City Homes are a partner on the One Newport Public Services Board, representing registered social landlords. This has improved partnership working and will ensure that the sector is engaged in the development of the Wellbeing Plan which the PSB will be working towards from April 2018. Progress against this plan will be subject to the Council's Partnership Scrutiny arrangements.

Scrutiny Committees

Not applicable.

Equalities Impact Assessment and the Equalities Act 2010

There are no equalities implications.

Children and Families (Wales) Measure

There are no children and families implications.

Wellbeing of Future Generations (Wales) Act 2015

The proposed changes will enable NCH to operate independently but in partnership with the Council to deliver key well-being objectives in relation to building cohesive and sustainable communities and promoting economic growth and regeneration. The new governance arrangements are also consistent with the sustainable development principles of collaboration, integrated working and also greater tenant involvement and engagement.

Background Papers

NCH Proposed Rule Changes
NCH Notices of SGM/AGM 21st September 2017 and proposed resolutions
NCH briefing note to Share Members

Dated: 25th August 2017