

# REPORT FOR DECISION



<b>DECISION OF:</b>	<b>Cabinet</b>
<b>DATE:</b>	<b>17 April 2019</b>
<b>SUBJECT:</b>	Approval of revised Housing Management Agreement between the Council and Six Town Housing plus related matters
<b>REPORT FROM:</b>	Councillor Eamonn O'Brien Cabinet Member for Finance and Housing
<b>CONTACT OFFICER:</b>	Paul Patterson, Executive Director for Business Growth and Infrastructure  Julie Gonda, Interim Executive Director for Communities and Wellbeing
<b>TYPE OF DECISION:</b>	<b>KEY DECISION</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	For publication
<b>SUMMARY:</b>	<p>An independent review of all housing services and functions provided by the Council and Six Town Housing has taken place, primarily due to the imminent expiry of the Council's contract with its Arms' Length Management Organisation (ALMO), Six Town Housing.</p> <p>The review was seen as an opportunity to identify more efficient and effective means of service delivery responding to the budget and demand pressures faced, currently and in the future, by the Council and Six Town Housing and to respond to the Council's Growth Strategy, thus helping to generate new income streams and remove the Council's reliance on Government income in the future.</p>

	<p>Some of the key recommendations of the review identified the need for a new working relationship between the Council and Six Town Housing and to facilitate this, new governance principles have been developed which will support a new working relationship required to support the Council's overall goals of growth and investment in the Borough. In order to support these new ways of working, the Council is proposing to transfer 51 members of staff to Six Town Housing, under TUPE (Transfer of Undertakings (Protection of Employment) Regulations) 2006). (Schedule 6 – Transferring Employees in the new Housing Management Agreement is deliberately left blank in the version presented to Cabinet due to the personal details of staff involved. However, this will be populated in the final version signed by the Council and Six Town Housing.)</p>
<p><b>OPTIONS &amp; RECOMMENDED OPTION</b></p>	<p>Cabinet are asked to consider the following options:</p> <p>Option 1 – a) agree the adoption of a new Housing Management Agreement (Appendix 1) and Member Agreement (Appendix 2) from 1 June 2019, and a new governance relationship;</p> <p>b) consider and agree the delegation of executive powers as set out in Schedule - Delegated Matters – (Appendix 5) and the reserved matters as set out in Schedule – Retained Functions / Matter (Appendix 6) and described in the Services Specification appended to the draft Housing Management Agreement (Appendix 1);</p> <p>c) should it be necessary, agree a brief extension of the existing Management Agreement pending statutory approval from the Regulator of Social Housing;</p> <p>d) agree the extension of tenure of Six Town Housing's Board Chair for a period of no longer than twelve months;</p> <p>e) delegate signing of the Management Agreement and Member Agreement to the Cabinet Member for Finance and Housing in consultation with the Executive Director for Business Growth and Infrastructure and Interim Executive Director for Communities and Wellbeing.</p> <p>Option 2 – not support the adoption of the new Housing Management Agreement and Member Agreement, and associated governance arrangements.</p> <p><b>Reasons</b></p> <p>Option 1 will support the new way of working between the Council and Six Town Housing providing opportunities for efficiencies and supporting the Council's 'Growth Agenda' and providing potential for</p>

	<p>the Council to maximise its opportunities to generate income through growth and so cease to be so reliant on Government funding.</p> <p>To agree the extension of tenure of Six Town Housing's Board Chair for a period of no longer than twelve months will provide consistency during the crucial embedding of the new Management Agreement, new ways of working and establishment of new governance arrangements.</p> <p>Option 2 – would involve not adopting the new Housing Management Agreement and would leave the Council without a valid contract for the delivery of housing management services for its stock and residents. The status quo is not an option, as failure to move to new ways of working as soon as possible would not maximise the Council's aspirations for growth and financial self-resilience. Further, upon the expiry of the current Management Agreement on 30<sup>th</sup> April 2019, alternate arrangements would need to be put in place. Six Town Housing would also lose the leadership of an experienced Chair.</p> <p>Cabinet is recommended to approve Option 1.</p>
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<b>IMPLICATIONS:</b>	Failure to act promptly will result in the Council not having a contract for the delivery of housing management services to its stock and delay its growth delivery plan.
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	<p>The agreement sets out the basis for the fee payable to Six Town Housing (from the Housing Revenue Account (HRA)) for managing the Council's Housing stock. The HRA estimates for 2019/20 assume the Management Fee to be £13,058,600 this being the current year's figure, pro rata from start date of new Management Agreement; any changes to this figure will impact on the level of HRA balances.</p> <p>Current costs for 2019/20 of the services subject to TUPE will also be transferred once finalised.</p> <p>The new agreement is structured to assist the Council's future growth ambitions.</p>

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	<p>As growth ambitions / service delivery develop, further amendments may be required to the agreement.</p> <p>Members' attention is drawn to schedule 3 of the Management Agreement as the new relationship will seek to deliver business efficiencies as well as income through growth.</p> <p>Further, the transfer of additional services will deliver immediate in-year general fund budget savings due to vacant posts that will be held by the Council and deleted. In addition, Six Town Housing are undertaking a transformation programme after the initial transition to support the Council in delivering its medium and long term budget strategy.</p> <p>Further, the new Housing Management Agreement and the approach to Business Planning will bring discipline to the pursuit of operational business efficiencies in order to create additional robust and sustainable surpluses for use by the Council and Six Town Housing.</p>
<b>Health and Safety Implications</b>	No issues identified at this stage.
<b>Statement by Executive Director of Resources (including Health and Safety Implications)</b>	There are no wider resource implications.
<b>Equality/Diversity implications:</b>	There are no perceived equalities issues identified as part of these proposals.
<b>Considered by Monitoring Officer:</b>	<p>External legal advice has been obtained during the review of the governance arrangements. The recommended change in governance arrangements followed an external review to ensure efficient and effective services are delivered and to grow and assure the Council's assets. Cabinet is asked to agree to the delegation of executive powers to Six Town Housing as outlined in Schedule – Delegated Matters (Appendix 5) to this report. Matters which are to be reserved to the Council are set out in Schedule – Retained Functions / Matters (Appendix 6).</p>

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	<p>The Council must also seek statutory approval (Section 27 Housing Act) from the Regulator following consultation.</p> <p>There is no prescribed length for the term of the Management Agreement. A long-term agreement will provide for greater certainty in terms of business planning and any risks associated with a long term agreement will be mitigated by contractual mechanisms through monitoring and control arrangements.</p>	JH
<b>Wards Affected:</b>	All	
<b>Scrutiny Interest:</b>		

## TRACKING/PROCESS

## DIRECTOR: Business, Growth & Infrastructure

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
Scrutiny Committee	Cabinet/Committee	Council	
	<b>17/04/19</b>		

## 1.0 BACKGROUND

- 1.1 In November 2017, and following a tender process, the Council commissioned Savills Housing Consultancy to undertake an independent review of all housing services and functions provided by the Council and Six Town Housing.
- 1.2 The work was commissioned primarily due to the imminent expiry of the Council's contract with its Arms' Length Management Organisation (ALMO), Six Town Housing, and was carried out between December 2017 and May 2018.
- 1.3 The review was seen as an opportunity to identify more efficient and effective means of service delivery responding to the budget and demand pressures faced, currently and in the future, by the Council and Six Town Housing.

- 1.4 Prior to the conclusion of the review, the Council recognised the need for it to implement an effective Growth Strategy, thus helping to generate new income streams and remove the Council's reliance on Government income in the future. As part of this realignment of services, the Council appointed an Executive Director for Business Growth and Infrastructure and commenced the realignment of Council services under this new directorate. As a result, the ultimate recommendations of the Savills Review focused on how future service delivery within the Council and Six Town Housing could support this new agenda as effectively as possible.
- 1.5 Due to the original contract between the Council and Six Town Housing expiring in 2017, Cabinet has previously approved three, short-term extensions of the contract. This has provided the Council with the opportunities to undertake a thorough review of the way housing services are provided and, subsequently, time to implement any recommendations from the review.
- 1.6 Following the completion of the Savills Review, an Executive Team of senior officers from the Council and Six Town Housing, have commenced the process of implementing the recommendations.
- 1.7 Some of the key recommendations of the Savills Review identified the need for a new working relationship between the Council and Six Town Housing. It was also considered that the transfer of a range of housing-associated functions previously carried out within the Council to Six Town Housing would create more integrated and effective services. To enable this a new Housing Management Agreement (Appendix 1) needed to be developed. With expert support from consultants Altair and legal experts Trowers and Hamlins LLP, this document has now been produced which will support the new working relationship required to support the Council's overall goals of growth and investment in the Borough. .
- 1.8 The new management agreement with Six Town Housing contains several elements to ensure it can better support the delivery of the Council's growth agenda. The new Parent Board and Subsidiary Board governance arrangement is based upon successful models seen in both the social housing and commercial sectors where the Parent Board governs their commercial and registered provider subsidiary companies through a more commercial group

company structure. The precise detail has yet to be finalised, but in summary the powers that are set out in the Management and Member Agreement will be exercised through this Board structure instead of an outdated client contractor split. This will ensure, given appropriate board composition, that the oversight and strategic direction is provided by a team of senior executive officers with relevant skills and experience.

- 1.9 We are also designing a commercial business planning framework as well as seeking to establish a more mature partnership relationship that moves away from an old fashioned, rigid and constraining client / contractor relationship. Six Town Housing will be encouraged, and the business planning framework will incentivise, a more commercial approach. This is so that efficiencies can be established in the operational design, combined with the Council building new homes to generate improved surpluses that then can be structured to secure income back to the Council from the HRA. This will be set in the commercial context of ensuring Six Town Housing has surplus that robustly protects its operation against housing market impact. Six Town Housing will be directed to grow its service offering especially in relation to neighbourhood services. By transferring over additional Council services, Six Town Housing will be able, with the Council's support, to deliver a more joined up and inclusive neighbourhood service that improves the place and lives of local people. This approach will also free up the Council to focus on core strategic activities especially economic and housing development.

## **2. Main terms of the proposed new Housing Management Agreement (Appendix 1)**

- 2.1 The proposed new Housing Management Agreement is shorter, more output-based than the current Management Agreement. This reflects not only the need to update the provisions included in this document, but also the fact that the relationship between the Council and Six Town Housing is a mature one and is to be based on partnership principles.
- 2.2 The main provisions of the draft Management Agreement are summarised below. Also, please note summary report of the new agreement (Appendix 3):

- 1 The Council and Six Town Housing agree to adhere to the principles set out in the Partnership Protocol.
- 2 Six Town Housing will provide the Services as set out in the Specification. This will comprise the current housing management functions but also the new service areas that are being transferred to Six Town Housing. It is proposed that the Key Performance Indicators (KPIs) / targets which Six Town Housing is required to achieve will be finalised within the first six months of the new contract. Provision has also been made for both the Council and Six Town Housing to agree over the course of the first year appropriate operational requirements in relation to the new service areas.
- 3 The Services will be reviewed to ensure that they are aligned with and help to deliver Council strategies. Key Performance Indicators / targets will be reviewed as part of the Annual Business Planning process. They need to be realistic, i.e. reflect service standards achieved by the best registered providers in the country, with regard to the resources made available by the Council.
- 4 The Services will usually be varied by the Council as part of the Annual Business Planning process but the Services will also be varied following the exercise or termination of the Right to Manage, formal steps taken by the regulator, or where there are other circumstances that require a variation to be implemented outside the annual approval process. If a variation is not agreed it will be determined in accordance with the dispute resolution procedure (see item 20 below). The nature and extent of the variation to the Services must result in a commensurate variation in the Fee (see item 8 below).
- 5 Six Town Housing will assist the Council in delivering the Stock Maintenance and Improvement Programme by administering or letting third party contracts and carrying out Works itself through its Direct Labour Organisation. The Programme will be reviewed by the parties as part of the Annual Business Planning process and, as with the other Services, the Programme will take account of any variation in the Works element of the Fee.



- 6 Six Town Housing will work with the Parent Board, by providing the information required for the Performance Review Arrangements including quarterly report production. The format of the reporting is to be agreed between the Council and Six Town Housing but is anticipated to include performance against KPIs, complaints and, where agreed as necessary, "deep dive" reviews of particular issues.
- 7 The Fee as drafted comprises payment for both the Services and the Works Programme. It will be determined as part of the Budget and Rent-Setting Process. In setting the Fee the Council will have regard to the current medium term financial forecast in the Business Plan, acknowledge the consequential effect on both the Services and the Works Programme and enable Six Town Housing to discharge its obligations under third party contracts.
- 8 Six Town Housing will maintain its reserves in accordance with generally accepted accounting practice. Use of those reserves will be approved as part of the Annual Business Planning process.
- 9 Six Town Housing can pursue and exploit opportunities for income generation with third parties, subject to various safeguards including the need for approval by the Council and to ensure that the "Teckal" status of Six Town is not put at risk.
- 10 The parties commit to the principle of continuous improvement and to delivering improvement in the delivery of the Services through the KPI / targets process. Six Town Housing will endeavour to achieve year-on-year efficiencies by delivering the Services for less than the Fee.
- 11 A Business Plan will be agreed each year in accordance with the Annual Business Planning process and the Business Plan will include the basic elements of the current format. The Business Plan will be prepared on a rolling basis. If the Business Plan is not agreed it will be determined in accordance with the dispute resolution procedure (see item 19 below).

- 12 The Council agrees only to use its rights as sole member of Six Town Housing to amend the constitution or appoint/remove board members (except for its own nominees) or to issue directions to Six Town Housing or its board if and then only or so long as Six Town Housing fails to comply with the terms of the Management Agreement and the Council would therefore be entitled to terminate the Management Agreement in accordance with the provisions outlined at item 19 below. This is subject to the governance arrangements being kept under review so that Six Town Housing is best able to perform the Services.
- 13 The Council will continue to provide certain traded services to Six Town Housing under a Service Level Agreement, e.g. Legal Services, Architects, facilities management.
- 14 The Council agrees to provide and evidence the support for Six Town Housing required to enable the ALMO's auditors to confirm that it is a "going concern". The Council also agrees to ensure that Six Town Housing is able to discharge its liabilities for pensions costs attributable to its past, present and future employees. Six Town Housing will not knowingly take steps outside the ordinary course of business which are likely to add materially to the Council's potential liability without first obtaining the Council's consent (not to be unreasonably withheld or delayed).
- 15 The parties acknowledge that the HRA is subject to the statutory ring-fence and they will use all reasonable endeavours to maximise the benefits of the HRA for Council tenants.
- 16 Six Town Housing acknowledges that the Council will (inter alia) set rents and other charges for tenants each year.
- 17 The Agreement will expire on 31 May 2029 unless it is terminated earlier for breach.
- 18 The Council is entitled to terminate the Management Agreement if Six Town Housing fails to comply with it or, in the Council's reasonable opinion, there is a serious and substantiated risk that it will shortly fail to

comply. This is subject to Six Town Housing's entitlement to a reasonable opportunity to remedy an actual or anticipated failure and a failure to comply with KPIs / targets which will be deemed to be capable of remedy. If the Council becomes entitled to terminate, it can do so in respect of the whole or part of the Agreement and can either provide the Services itself or procure that a third party does so. In compliance with the requirements of the regulator, the Agreement includes termination provisions to enable the Right to Manage to be exercised and for the regulator to direct the transfer of management functions.

- 19 The Agreement contains a lengthy dispute resolution procedure designed to facilitate agreement between the parties or allow an external expert to resolve matters; but before the expert intervenes the Council has the opportunity to make a decision which is final and binding.
- 20 The Agreement is subject to the regulator's right to direct the variation or termination of it.

### **3. Main Terms of the proposed Member Agreement (Appendix 2)**

- 3.1 To complement the Housing Management Agreement, a Member Agreement has been developed (Appendix 2).
- 3.2 The Member Agreement is intended to encapsulate the parent / subsidiary relationship between the Council and Six Town Housing, the key points being:
  1. The Member Agreement ensures that the principles of partnership are enshrined in the relationship by reference to the Partnership Protocol.
  2. The Business Planning process is repeated from the Management Agreement.
  3. It is acknowledged that the Business is vested in the Directors of Six Town Housing but that there is a list of Reserved Matters that require the Council's consent. These are set out in Schedule 1 to the Member Agreement. The Directors will carry out the Business so as to conform

with the Business Plan and so that there is alignment with the Council's strategic objectives.

4. Six Town Housing will report to the Parent Board on its progress in relation to the Business Plan, KPIs and "deep dive" reviews as necessary (as per paragraph 7 above).
5. The Agreement allows the Council to designate certain policies as "Group Policies" which it would require all of its subsidiary companies (to the extent that new subsidiaries are created) to comply with.
6. The Agreement anticipates that new subsidiary companies could be incorporated into the Member Agreement by completing a Deed of Adherence.

#### **4.0 Next Steps**

- 4.1 A number of schedules relating to various matters will be attached to the Management Agreement, including details of staff to transfer to Six Town Housing; assets to transfer to Six Town Housing; clarification on areas of responsibility for the Council and Six Town Housing in the future.
- 4.2 Consultation with all of the Council's secure tenants on the proposals has been undertaken, along with a broader community consultation. A twenty-eight day consultation was carried out over the period 11 March 2019 to 8 April 2019. Section 105 of the Housing Act 1985 imposes a statutory duty to consult with secure tenants where they are likely to be "*substantially affected*" by changes to housing management. The Council must also consider any representations made to it before making any decisions. Further, Section 3 of the Local Government Act 1999 requires that local authorities must make arrangements to secure continuous improvement (the **Best Value Duty**). In deciding how to fulfil its Best Value Duty, a local authority needs to consult.
- 4.3 In addition, the Council will need to obtain approval from the Secretary of State through Section 27 of the Housing Act 1985 consent process administered by

the Regulator of Social Housing before entering into the new Management Agreement.

Letters were sent to all Council tenants individually, information was put on the Council's website and social media was used to raise awareness of the consultation. The anonymised results of consultation are included in Appendix 4 of this report, the chief concerns raised are:

- Asked for the proposals in the letter to be clarified – 9 responses
- Raised concerns about STH's current performance or ability to take on more responsibility – 8 responses
- Asked for their deceased partner's name to be removed from future correspondence – 3 responses
- Raised queries about rehousing and impact of the proposals – 3 responses
- Reported repairs – 2 responses
- Supported the proposal – 1 response
- Felt consultation unnecessary – 1 response

Two people completed the consultation response form but made no comment.

All responses have received bespoke replies. However, there is no rationale to justify any changes to the proposals consulted on as a result.

4.3 Following approval by Cabinet and obtaining section 27 consent, the Council and Six Town Housing will be able to sign the new Housing Management Agreement. It is proposed that the new housing management agreement will run until 31 May 2029.

4.4 It should be noted that the timescale for obtaining section 27 consent is controlled by the Regulator of Social Housing and not Bury Council. There are also consultation timescales to be followed with the TUPE process. Therefore, it is not guaranteed that this will have been obtained prior to 30 April 2019 to allow the new management agreement to be effective from 1 June 2019. It is, therefore, possible that the current Management Agreement will need to be extended until such approvals are obtained.

- 4.5 The first year's management fee for the services to be transferred has been evaluated and will be agreed with Six Town Housing. A new performance management arrangement between the Council and Six Town Housing will evolve over the next twelve months and will be subject to further work based on the new relationship between the Council and Six Town Housing as set out in the proposed new Management Agreement.

## **5.0 CONCLUSION**

- 5.1 Cabinet are aware of the financial pressures faced by this Council. Therefore, staying as we are is not an option in any area where we currently work. We need to be proactive in determining our future, and commitment to delivering an effective Growth Strategy is part of this. Adopting the new Housing Management Agreement between the Council and Six Town Housing is one way that we can achieve this.
- 5.2 Cabinet are asked to consider the options set out in this report (above).

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### **List of Background Papers:-**

Appendix 1 – Housing Management Agreement - Agreement for the delivery of housing management and other services

Appendix 2 – Member Agreement – Bury Council - Six Town Housing

Appendix 3 – Summary Report of Management Agreement by Trowers and Hamblins LLP

Appendix 4 – Anonymised responses to consultation on proposals

Appendix 5 – Schedule – Delegated Matters

Appendix 6 – Schedule – Retained Functions / Matters

Appendix 7 - Glossary

Report to Cabinet 14<sup>th</sup> December 2016 – Approval of an extension to the housing management agreement between the Council and Six Town Housing plus related matters

Report to Cabinet 15<sup>th</sup> November 2017 - Approval of a further extension to the Housing Management Agreement between the Council and Six Town Housing plus related matters (Exempt)

Report to Cabinet 5<sup>th</sup> September 2018- Six Town Housing Contract Extension

Report to Cabinet 25<sup>th</sup> July 2018 - Housing Review Report

**Contact Details:-**

Paul Patterson – Executive Director of Business Growth and Infrastructure

Julie Gonda – Interim Executive Director for Communities and Wellbeing