

Classification: Open	Decision Type: Key
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Report to:	Cabinet	Date: 16 th July 2024
Subject:	Six Town Housing - Six Town Housing – Post Transition Actions	
Report of	Cabinet Member for Housing Services	

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Summary

1. This Report consists of two parts seeking approval for the necessary post transition actions and transactions to complete arrangements for Six Town Housing to continue its reduced social housing activities after it ceased to be the Council’s ALMO.
2. Part 1 explains and recommends approval for
 - i. the revision and amendment of the Six Town Housing (STH) Articles of Association to provide the governance arrangements for delivery of its reduced activities following the termination of its ALMO role on 31/1/24. Also recommends appointment of a new Chair of the newly composed Six Town Housing Board.
3. Part 2 explains and recommends approval of:
 - i. A new Intra-Group Agreement (IGA) with STH to govern and record the corporate relationship between the Council and the Company. To provide assurance to STH and the Regulator that the Council will support STH to deliver and protect its social housing and not impede STHs compliance with the Regulators Regulatory Standards
 - ii. A new Operation Plans & Service Level Agreement (“Op Plans & SLA”) with STH that further consolidates the operational plans for the provision of “Council Services” to STH including contact points, accountabilities, and the future inclusion of performance levels.
 - iii. A new Data Processing Agreement (DPA) with STH to underpin the delivery of the Council Services to ensure all sharing and processing of STH tenant’s personal data is done in a lawful and compliant manner.
 - iv. Minor amendments to the Termination & Transition Agreement 1/2/24 (“T&T Agreement”) agreed as minor but necessary by the Monitoring Officer and Solicitors acting for STH.

4. Appended to the Report are the instruments to give effect to these recommended approvals for completion by the Council.

Recommendation(s)

5. To note reasons, power, and process for the Council to amend STH Articles of Association and appoint new Chair.
6. To approve the Sole Member (Council) Special Resolution amending Articles of Association and appointing the new Chair.
7. To delegate to the Cabinet Member for Housing Services the signing of the Sole Member Special Resolution to give effect to the Resolution as appended to this report.
8. Delegate to the Monitoring Office the notifying of Companies House and the Regulator of Social Housing of the amendments of the Articles of Association.
9. To note
 - i. The background and reasons explaining the need to approve the terms of the following instruments, and approve and direct the completion following instruments with STH:
 - a. Intra-Group Agreement.
 - b. Council Services Operation Plans & SLA.
 - c. Data Processing Agreement
 - d. Termination & Transition Agreement 1/2/24 minor amendment.
 - ii. delegate to Director of Law and Democratic Services the power to execute each of the above instruments (for later mutual exchange of signed instruments with STH)

Reasons for recommendation(s)

10. STH no longer performs the ALMO function for the Council but it continues as an active Private Registered Provider of Social Housing company owning and leasing just 149 social housing homes which it lets and sublets to its own social housing tenants. STH no longer employs staff, is managed solely by its Board, and wholly relies on the Council for services.
11. Consequently, STH Articles of Association need changing to provide the governance arrangements appropriate to enable STH to efficiently deliver services to its small number of tenants.
12. Furthermore, the Council and STH are advised to enter into the agreements recommended by this Report to ensure compliance with the law, regulatory requirements, and good governance practice so that the restructured STH

may continue with its reduced social housing activities relying on the support of the Council.

Alternative options considered and rejected.

13. The option to “do nothing” is not appropriate since STH corporate governance arrangements must provide for and align with STHs significantly reduced role and activities. And the additional agreements recommended in this Report shall ensure that both parties act lawfully and compliantly as set out in the body of the report.

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Background

14. On 1st February 2024 STH ceased managing the Council’s housing stock and so ceased to its ALMO.
15. However, STH remains intact as a wholly owned subsidiary company of the Council and is itself a Private Registered Provider of Social Housing owning and leasing 149 social housing homes which it lets and sublets to its own social housing tenants under the assured tenancy regime governed by the Housing Act 1988.
16. STH no longer has any paid staff, is managed solely by its Board, and relies on the Council (including its agents and sub-contractors) for all services required to manage its tenancies and properties and to maintain its regulatory compliance (these are referred to as “Council Services”).
17. The key contractual arrangement regulating the relationship between STH and the Council is the “Termination and Transition Agreement 1/2/24” (T&T Agreement”) and this will be augmented by the instruments which are recommended in this Report.

Amending STH Articles of Association by Council Special Resolution & Appointing the new STH Chair.

18. It is necessary to revise and make the necessary updating changes to STHs corporate governance instruments to provide for and align to its new and significantly reduced activities. Consequently, this part of the Report addresses and recommends approval for the changing of the STH Articles of Association.

19. As the sole owner of STH, the Council has the right to amend STH Articles of Association by “Special Resolution” under s357 of the Companies Act 2006.
20. The proposed changes to the Articles of Association are particularised in specific detail in the Special Resolution drawn up for this purpose by Legal Services and appended to this Report at Appendix 1. The material changes to the current Articles consist of the following:
 - i. Reduction of the Board membership to four members with Chair to be appointed by Council.
 - ii. Deletion of all references to “Council Board Members”, “Tenant Board Members” and “Independent Members” types.
 - iii. Reduction of the Objects to the basic objects usually applicable to small Private Registered Providers of Social Housing.
 - iv. Miscellaneous changes throughout to align with the above material changes and to correct errors in the existing Articles.
21. The STH Board members who were in post until STH ceased being the Council’s ALMO all resigned effective on 1/2/24. Four new Board members all of whom are senior Council officers were appointed as Board members to assume management of the company. Although the current Articles permit just four members to manage the company it should only be for an interim period until full membership is restored and, therefore, it is appropriate to modify the Articles of Association to provide for the new Board composition of four members *before* the new Board convenes its first meeting to begin its active management.
22. It is also convenient to take the opportunity to appoint the new Chair of the newly composed STH Board.
23. The proposed changes to the Articles of Association and appointment of the Chair will take effect immediately upon the signing of the Special Resolution. The Special Resolution and changed Articles will then be registered with Companies House and the Regulator of Social Housing.

Post transition agreements to be entered into with STH.

24. The Council (and STH) are advised to enter into the following agreements recommended by this Report to ensure compliance with the law, regulatory requirements, and good governance practice to enable the restructured STH

to continue with its reduced social housing activities relying on the support of the Council.

Intra-Group Agreement

25. The legal and regulatory advice to the Council is that it should now enter this IGA with STH to govern and record their corporate relationship as “subsidiary” and “parent”. The main provisions of the IGA are as follows:
 - i. To declare and express the parties’ common objectives, values, and vision by becoming members of a group with common objectives in relation to the provision of quality social housing and related services.
 - ii. That the Council as parent shall support STH to deliver its objectives including providing Council Services (this effectively double downs on the commitments already made by the Council pursuant to the terms of the T&T Agreement).
 - iii. That the Council shall support STH to protect its social housing assets and agrees not to act or require STH to act in any way that would render STH in breach of the Regulator of Social Housing Regulatory Framework.
 - iv. In reciprocation STH agrees to adopt “group policies” reasonably issued by the Council and to submit its Business Plans as directed by the Council for its endorsement
26. An IGA document in this form would be expected to be in place by the Regulator in these circumstances and would ask for it in the event it requires corporate information from STH.
27. The IGA provisions adhere to the requirements of both the Regulator of Social Housing Regulatory Framework and the National Federation of Housing’s Code of Governance 2020 that STH adopted as its governance code prior to transition.
28. The IGA contained in Appendix 2 imposes little in terms of new obligations on STH since STH has always been under the Council’s control insofar as corporate planning and development.

Operational Plans & Service Level Agreement

29. STH no longer has any paid staff and relies on the Council (including its agents and sub-contractors) for all services required to manage its tenancies and properties and to maintain its regulatory compliance. These “Council Services” are supplied pursuant to the terms of the Termination & Transition Agreement.

30. The provisions of the Termination & Transition Agreement anticipated the development and agreement of further operational plans to provide the necessary details for the day-to-day operational delivery of Council Services including contact points, accountabilities, and performance levels. The Operational Plans & Service Level Agreement appended at Appendix 3 provides that further detail and is now recommended to Cabinet for approval and completing.
31. The Executive Director is satisfied that the Operational Plans & SLA provides sufficient detail, clarity, and assurance for the delivery of Council Services to properly manage STH's social housing tenancies, properties and maintain its regulatory compliance. STH may be required to share this Operational Plans & SLA with the Regulator to demonstrate it has sufficient contracts and controls in place to comply with its regulatory obligations.
32. The provisions of the proposed Operational Plans & SLA provide that detail, clarity and assurance as follows:
 - i. The "*Parties Due Regard & Consideration Declaration*" statement records the fact that both parties have considered the following:
 - a. the management needs of STH Social Housing stock and its corporate objects,
 - b. the needs and expectations of STH's tenants,
 - c. the Regulatory Framework,
 - d. the Code of Governance and its associated guidance particularly those parts that addresses compliance by "small RPs",
 - e. STHs ownership by and long-standing relationship with the Council,
 - f. that the STH work force transferred to the Council on 1st February 2024 continue to perform largely the same functions pertaining to the Council's and STH's Social Housing as they were engaged upon prior to that date, and
 - g. that the operational servicing of the STH's activities continues to be performed using the same operating systems and processes used before 1st February 2024.

and that after having due regard to the above both parties agree that the provision of the Council Services shall be sufficient to enable STH to

manage its 149 properties and tenancies in compliance with all laws and regulations.

The acknowledgement and recording of this should give assurance to the Regulator that STH has considered the appropriate matters, regulation, and code in making its determination. This is particularly important in relation to fulfilling the functions usually undertaken by a chief executive or managing director. STH is now managed by its Board only and relies on the Council Services for executive support. As explained below, this role is now covered by the Council's Senior officers.

- ii. The schedule of Council Services set out in the Termination & Transition Agreement are repeated in Schedule 1 of the Op Plans & SLA. Against each service area is detailed "*Further and better particulars of Council Services & the responsible and accountable Council Service Managers*" to be provided under the Op Plans & SLA. The key provisions in the Schedule are:
 - a. the allocation of accountability and responsibility of Council Service delivery to named senior officers of the Council (described as "Service Managers") with overall responsibility allocated to the Director of Housing Operations,
 - b. space provided to add any future additional information about service lead contacts, operational plan/deployment/policy/procedure underpinning the delivery of the service type.
 - iii. There are no addition payments to be paid by STH since "consideration" for Council Services is dealt with under the Termination & Transition Agreement. However, it is recognised in the Operational Plans & SLA that charges for Council Services may increase in the future (via normal inflation) and charged to STH. Those charges will then be passed down to tenants via rent and service charge increases following review in the usual way.
33. This first Operational Plans and SLA is designed to swiftly put in place key accountabilities and to connect the Council's own Housing Service to the operational needs of STH. However, Cabinet will appreciate that the Council is bedding in and developing its Housing Service following the transition to direct management of its housing stock on 1st February 2024. Consequently, matters such as refined performance measures will need to be worked out and updated into a revised Schedule 1 at some point in the future.
34. As for now, the Operational Plans and SLA simply demands of the Council Services that they be sufficient to ensure the proper and compliant management of STH tenancies, properties, and operations. These

requirements are bolstered by complimentary commitments made by the Council in the Termination & Transition Agreement and IGA to support STH in its compliant management and delivery of services to its tenants.

35. For the Council to deliver the Council Services to STH and its tenants the Council must have and process the tenant's personal data. This is a regulated activity under data protection legislation (GDPR and Data Protection Act 2018) and the Information Commissioner's Office (ICO) has issued a Data Sharing Code to assist organisations sharing and processing personal data to comply with the law.
36. The Council Legal Services has produced this Data Processing Agreement which they have confirmed is fit for purpose insofar as ensuring that the transfer and processing of STH tenants' personal data by the Council is done lawfully in compliance with applicable data protection legislation.
37. The lawful basis for data sharing in this instance is both "*consent*" (signing of the tenancy agreement which includes provision for consent to data processing) and "*contract*" (the need to process data by STH and its agents to deliver services to the tenants and their homes in accordance with STH legal commitments in the tenancy contract).

Minor corrective amendments to the Termination & Transition Agreement
1/2/24

38. The terms of transition were set out in the Termination and Transition Agreement 1/2/24 agreed between the parties ("T&T Agreement"). However, following completion and the T&T Agreement the Council's lawyers noticed that several links and references to transferred assets set out in Schedule 1 are erroneous and need to be deleted.
39. The erroneous references and links contained in Schedule 1 of the T&T Agreement are those referring to:
 - i. Leasing Agreements
 - ii. Premises Leases: (1) Redbank and (2) Peachment
40. The solution to correct the minor errors agreed between the Council Legal Services and lawyers Anthony Collins, who acted for STH on the T&T Agreement, was simply strike through the offending references and redirect the references for Leasing Agreements to the Contract Registers A and B which should properly contain any such agreements.
41. Attached at Appendix 5A is the T&T Agreement with the corrective action completed for completion by initialling against the two places marked "STH Initial and Date Here".

STH reciprocal approvals to complete these agreements and subsequent completion.

42. Following the changing of the Articles of Association and appointment of the Chair the new STH Board can meet to deal with its first business that shall include approving the same agreements recommended to the Council in this Report. Once both the Council's Cabinet and STH Board approve the agreements the necessary steps will be taken to complete the transactions.

Links with the Corporate Priorities:

Please summarise how this links to the Let's Do It Strategy.

- 43.

Equality Impact and Considerations:

*Please provide an explanation of the outcome(s) of an initial or full EIA and make **specific reference regarding the protected characteristic of Looked After Children**. Intranet link to EIA documents is [here](#).*

- 44.

Environmental Impact and Considerations:

*Please provide an explanation of the Environmental impact of this decision. Please include the impact on both **Carbon emissions** (contact climate@bury.gov.uk for advice) and **Biodiversity** (contact c.m.wilkinson@bury.gov.uk for advice)*

- 45.

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation

Legal Implications:

46. The Council as sole owning member of STH is empowered to change the Articles of Association by "Special Resolution" under s357 of the Companies Act 2006.

47. Legal Services have advised the Director of Housing Operations as to the appropriateness of changing the Articles of Association to properly provide for and align with STH's new and significantly reduced role and activities.
48. The proposed change of Articles is one of several measures being taken to adjust STH's corporate arrangements, and its contractual arrangements with the Council (as explained in the Report), to ensure that STH can efficiently and effectively deliver its services to its tenants and maintain its regulatory compliance pending a fuller review of the future of STH, to be made as part of the Council's strategic housing planning. Legal Services is advising on all of these measures.
49. In relation to the recommendation to enter into the agreements discussed in Part 2 of this Report, Legal Services here confirm that each are necessary for the reasons given and to ensure that the Council (and STH) act lawfully, compliantly and in line with good governance.
50. All of the instruments and agreements appended hereto for signing have been drawn up by a solicitor of Legal Services.

Financial Implications:

51. Service Level Agreements provided by the Council to Six Town Housing will be charged in line with Council existing policies and budgets will be aligned and updated accordingly to reflect these charges.

Appendices:

Please list any appended documents.

1. Special Resolution amending STH Articles of Association & appointing the new STH Chair
2. Intra-Group Agreement
3. Operational Plans & SLA
4. Data Processing Agreement
- 5A. Amended Termination & Transition Agreement

Background papers:

Link to ICO guidance on data sharing: Data sharing: [Data sharing: a code of practice | ICO](#)

Please list any background documents to this report and include a hyperlink where possible.

N/A

Please include a glossary of terms, abbreviations and acronyms used in this report.

N/A

Term	Meaning