



**City of Westminster**

# Cabinet Report

<b>Decision Maker:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>19<sup>th</sup> February 2018</b>
<b>Classification:</b>	<b>For General Release</b>
<b>Title:</b>	<b>Westminster Community Homes – Legislative changes to governance arrangements</b>
<b>Wards Affected:</b>	<b>All</b>
<b>Key Decision:</b>	<b>Yes</b>
<b>Financial Summary:</b>	<b>Under this proposal, WCH will become a wholly owned subsidiary and would need to be fully consolidated into any group financial statements prepared by the council. If the holding were to reduce to 24% or less then the entity would be treated as an associate with simpler, reduced disclosure but significantly reduced control over decisions made by the board. There are currently 3 shareholdings in WCH, two of which are held by Westminster. Upon becoming a subsidiary of the Council all 3 shares will be held by the Council but there will be no cost to the Council resulting from this change.</b>
<b>Report of:</b>	<b>Director of Housing &amp; Regeneration</b>

## **1. Executive Summary**

- 1.1 Westminster Community Homes (WCH) was established in December 2008 as a Co-operative and Community Benefit Society (CCBS) to work with the City Council to increase the provision of affordable housing and other related activities which assist in the delivery of the City Council's strategic housing objectives.

- 1.2 The Housing and Planning Act 2016 introduced changes which could limit or remove the City Council's current level of control over Westminster Community Homes (WCH). To comply with the legislation WCH shareholders will need to agree to make changes to their rules to allow for either:
- a. A reduction in the percentage of Board Members nominated by the City Council to no more than 24% and to remove the City Council's current voting rights as a shareholder, or
  - b. Changes to the current Board membership and rules so that WCH becomes a City Council "wholly controlled" Registered Provider in which case the new legislation would not apply.
- 1.2 This report sets out the background to this new legislation, WCH current governance arrangements and WCH Board's view on the preferred way forward.
- 1.3 The Cabinet is asked to consider this issue in light of these changes and the legal advice provided within this report and to recommend to WCH Shareholders their preferred option for the future governance of WCH.

## **2. Recommendation:**

### **2.1 That the Cabinet agrees**

- 2.1.1 Westminster Community Homes (WCH) becomes a wholly controlled subsidiary of the City Council.
- 2.1.2 To delegate authority to the Director of Housing & Regeneration to carry out the necessary steps to implement this decision.

## **3. Reasons for Decision**

- 3.1 The provisions of the Regulation of Social Housing 2017 enacted on 16<sup>th</sup> November 2017 affect all registered providers, including WCH, which are now to be treated as Private Non-Financial Corporations. If these regulations are not to impact WCH and the City Council, and the City Council is to retain its current working arrangements with WCH, it will be necessary for WCH to become an organisation which is "wholly controlled" by the City Council.
- 3.2 The alternative is for WCH to be distanced from the City Council with the percentage of Board members nominated by the City Council restricted to 24% and the City Council losing its voting rights as a shareholder.

## **4. Background, including Policy Context**

- 4.1 In October 2015, the Office for National Statistics (**ONS**) reclassified Registered Providers (RPs) to the public sector because of the level of public sector influence over the management of RPs. Since then the Government has

introduced various measures to reduce the level of Government influence over RPs with the aim that the ONS will re-classify RPs back to the private sector.

- 4.2 Section 93 of the Housing and Planning Act 2016 empowered the Secretary of State to make regulations to limit or remove local authority influence over RPs.
- 4.3 In September 2017 the Secretary of State published a draft Statutory Instrument for reducing the influence of local authorities over RPs – the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017. The Statutory Instrument was then affirmed on 15<sup>th</sup> November 2017 and will take effect for the purposes of this report six months from that point which is 15<sup>th</sup> May 2018.
- 4.4 To remain a registered provider and to comply with the legislation WCH will need to either:
  - a. Reduce the percentage of Board Members nominated by the City Council to no more than 24% and to remove the City Council's current voting rights as a shareholder.

To comply with a. above WCH is required to amend its rules to remove any City Council shareholder membership and to ensure that the City Council can only appoint one board member out of the current 7 places, in line with the (24%) maximum allowable City Council nominees.

- b. Change the current shareholding and Board membership so that WCH becomes a City Council “wholly controlled” Registered Provider.

In order for this to happen WCH, through its shareholders, will need to agree changes to the rules concerning shareholding and Board membership to provide:

- no shareholders other than the local authority; a subsidiary of that local authority; or a person acting on behalf of the authority or a subsidiary of the authority and that
- Board nominations are made approved by the City Council.

- 4.5 Should no decision on the future governance of WCH be taken prior to the legislative deadline of 15<sup>th</sup> May 2018 then the Statutory Instrument will take effect resulting in the City Council's shareholding being removed and the Board nominations reduced to comply with the 24% maximum.

## **5. Westminster Community Homes – Current governance arrangements**

- 5.1 Westminster Community Homes (WCH) was formed by the City Council in December 2008 as a Co-operative and Community Benefit Society (CCBS) with charitable objectives and is registered with the Financial Conduct Authority

(FCA). In December 2009 it became a Registered Provider of affordable housing regulated by the Homes and Communities Agency.

## 5.2 Objectives and activities

### 5.2.1 WCH objectives are to carry out for the benefit of the community:

- the provision of affordable housing for people who have housing need and appropriate associated facilities and amenities
- any other charitable object that can be carried out from time to time by a Co-operative and Community Benefit Society.

### 5.2.2 WCH and the City Council have also entered into an Inter Group Agreement which sets out the decisions taken by the Parent (City Council) and those taken by the Board.

### 5.2.3 In order to achieve its objectives WCH works with the City Council to increase the provision of affordable housing and other related activities which assist in the delivery of the City Council's strategic housing objectives. These activities have changed over the years in line with the City Council's housing policies and are currently

- Negotiate the acquisition of lessee interests in the regeneration areas
- Provision of additional Intermediate rented units
- Provision of out of borough units for temporary accommodation and discharge of duty

### 5.2.4 In 2008 WCH entered into a Nomination Agreement with the City Council through which the City Council has 100% nomination rights in perpetuity to WCH units. As at the end of January 2017 WCH stock stood at 432 units.

## 5.3 Governance

### a. Shareholding

WCH is a 'not for profit' body, where the shareholders' derive no financial benefit and their rights are significantly less than in ordinary companies. Under CCBS rules the minimum number of shareholders is three.

The three current shareholders of WCH are:

- Westminster City Council (WCC)
- James Green (WCC employee and WCH Board Member)
- Ben Denton (Independent Chair)

James Green shareholding is held in trust for the City Council.

b. The Board

The key influence and future direction of the company is provided through the Board. The full Board comprises:

- 4 Westminster City Council nominees;
- 2 WCH Resident representatives and 1 independent Chair.

5.4 In the future, as a result of the changes proposed in this report all three shares in WCH will be held by the Council and all nominations to the board of WCH will be by the City Council.

5.5. Financial review

5.5.1 The Board is responsible for preparing the financial statements in accordance with applicable law and United Kingdom Generally Accepted Accounting Practice.

5.5.2 The Board is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the association.

5.5.3 The Board is also responsible for safeguarding the assets of the company and for taking reasonable steps for the prevention and detection of fraud and other irregularities. External Auditors are appointed each year to carry out the annual audit and assist in the preparation of the annual report.

5.6 Operational matters

5.6.1 WCH outsources most of its service delivery with CityWest Homes providing the majority of these services including Management and Maintenance, Company Secretariat and Accountancy. There are 5 WCH staff including 2 Negotiators who work solely on the acquisition of lessee interests in the regeneration areas.

**6. Legislative changes - WCH Board's view**

6.1 At the WCH Board meeting on 18<sup>th</sup> January 2018 this matter was considered. Devonshire's (WCH Solicitors) attended to provide support to the advice they had already provided. The Board Members were reminded that they must make their decision on which option to recommend to the WCH Shareholders based purely on what is best for WCH.

6.2 After detailed consideration the Board agreed that in light of the City Council's stated intention to continue to support WCH as one of the vehicles for delivery of housing supply that it was minded to recommend to the WCH shareholders that

they approve the move to WCH becoming wholly owned. It is anticipated that this decision will be formally approved at the next WCH Board meeting on 27<sup>th</sup> February 2018.

## **7. Financial Implications**

- 7.1 There are currently 3 shareholdings in WCH, two of which are controlled by Westminster City Council. Each share has a nominal value of £1. The recommendations in this report will result in WCH becoming a wholly owned (100%) subsidiary of the Council with all 3 shares will be held by the Council. There is no cost to the Council in transferring the third share
- 7.2 WCH, being a Registered Provider and charity, currently benefits from certain tax exemptions. This includes relief from Stamp Duty Liability Tax and exemption from Corporation Tax. Changes leading to WCH being wholly controlled by Westminster will not affect these tax exemptions as WCH will continue to be a not for profit registered provider and a charity.
- 7.3 While WCH is not currently wholly controlled by the Council, it is an entity that falls within the group boundary of the Council on the grounds of control and significant influence in line with the Code of Practice on Local Authority Accounting in the United Kingdom.
- 7.4 Under this proposal, WCH will become a wholly owned subsidiary and would need to be fully consolidated into any group financial statements prepared by the Council. If the holding were to reduce to 24% or less then the entity would be treated as an associate with simpler, reduced disclosure but significantly reduced control over decisions made by the board.
- 7.5 At the end of period 9 financial reporting (December 2017), WCH had fixed assets including homes and properties under development valued at £109m, with current assets of £3.36m including cash of £2.4m.
- 7.6 In the same period, WCH had current liabilities £14m including £12.8m of deferred income and grants. Long term liabilities are £86.1m. Long term liabilities include £10.2m in loans provided from the council's general fund. Remaining long term liabilities are made up of deferred grants primarily made up of grants provided through the Council's Affordable Housing Fund, and grants made available from the GLA.
- 7.7 WCH has funding agreements with the City Council covering both loans and grants provided through the Council's Affordable Housing Fund (AHF). These agreements include repayment terms for loans provided by the Council. Triggers requiring the repayment of any AHF not used by WCH for affordable housing purposes will be unchanged where WCH becomes a wholly owned subsidiary of the Council.

## **8. Legal Implications**

- 8.1 External legal advice was commissioned from Womble Bond Dickinson for the purposes of this report. Legal advisers supported the recommendations of this report. The advice outlined the principle that charities as a matter of law should be independent from state control and as such WCH's Board members and shareholders owe a fiduciary duty to the charity to act in its best interests. Such duty exists now and will continue to exist regardless of the outcome of this report for as long as WCH remains a charity. The City Council and WCH will review the existing agreements between the parties to ensure that any relevant changes are made pursuant to the recommendations of this report.
- 8.2 External legal advice identified the requirement to consult with the HCA and the FCA on the proposed changes to the governance of WCH. The consultation will take place once the process is approved by WCH.
- 8.3 In order to protect its interests in dealings with WCH, the City Council can continue to suggest various contractually based safeguards such as retention of exclusive nomination rights, options and rights of first refusal on disposals, etc. Any deals between the parties will be negotiated at arm's length and will only be made if in both parties' interests.

## **9. Staffing Implications**

- 9.1 Staffing arrangements at WCH will remain unchanged should it become wholly controlled by Westminster. Staff there will continue to be employees of WCH and not the council.

## **10. Consultation**

- 10.1 The City Council has consulted closely with WCH on these potential changes and the options have been fully discussed. Joint meetings have been held which informed WCH Board deliberations at their meeting on 18<sup>th</sup> January. A further WCH Board meeting has been set up for late February to make a final recommendation to the shareholders in light of the outcome of this report.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Fergus Coleman, Head of Affordable Housing and Strategy: 7641 2129, [fcoleman@westminster.gov.uk](mailto:fcoleman@westminster.gov.uk)**

## **BACKGROUND PAPERS**