

CABINET MEMBER DELEGATED DECISION, 12 APRIL 2021

Report title: Council and Homes for Lambeth Shareholders' Agreement

Wards: all

Portfolio: Councillor Matthew Bennett, Cabinet Member for Planning, Investment and New Homes

Report Authorised by: Councillor Matthew Bennett, Cabinet Member for Planning, Investment and New Homes

Contact for enquiries: Tom Branton, Director of Sustainable Growth and Opportunity

REPORT SUMMARY

The decisions made in March 2020 to approve the Homes for Lambeth (HFL) 3-year Business Plan included delegation of authority to the Cabinet Member for Planning, Investment and New Homes, in consultation with the Overview and Stewardship Panel (OSP), to agree revisions to the Memorandum of Understanding (MoU), which formally sets out the relationship between Council and HFL Group and all HFL companies (Build, Homes and Living).

This report seeks approval for the Council to enter into a Shareholders' Agreement (SHA) with Homes for Lambeth (HFL) to replace the MoU, which was first entered into in 2017 and has since been subject to a number of amendments.

The changes reflected in the SHA, when compared to the MoU, are an important part of the Council's response to the governance review conducted by Bevan Brittan and were reported to Ownership and Stewardship Panel (OSP) on 8th February 2021.

At the HFL combined board meeting on 25th March 2021 HFL resolved to enter into the SHA in the form appended to this report, subject to Council approval.

In order that changes in HFL board composition, as stated in the SHA, coincide with the resignation and appointment of HFL board members, also resolved at the board meeting on 25th March 2021, the SHA will need to be dated and thereby executed as a deed on 12th April 2021.

FINANCE SUMMARY

No financial implications will arise as a result of changes reflected in the Shareholders Agreement recommended in this report when compared with the existing Memorandum of Understanding.

RECOMMENDATIONS

(1) To approve that the Council enters into the Shareholders Agreement appended to this report.

- (2) To approve that the Shareholders Agreement will be signed and thereby executed as a deed on 12th April 2021.

1. CONTEXT

- 1.1 The HFL Delivery Plan and Corporate Plan covering the period April 2020 to March 2023 was approved by a Cabinet Member Decision Report in March 2020. The report acknowledged that good governance is key to the successful delivery of the HFL programme.
- 1.2 The meeting of the Overview & Scrutiny Committee ('OSC') in May 2020 followed the 30 March 2020 Cabinet Member Delegated Decision Report ('CMDDDR') on the Homes for Lambeth ('HFL') Delivery Plan and Corporate Plan. It was agreed that an external governance review would be undertaken.
- 1.3 The Bevan Brittan governance review report and the Council's response to its findings were reported to Growth & Investment Panel (GIP) on 18th November 2020. The response included a review and of HFL Board composition.
- 1.4 Changes to HFL Board composition proposed as a result of the review were reported to Ownership and Stewardship Panel (OSP) on 10th February 2021.

2. PROPOSAL AND REASONS

- 2.1 The Council's response to the Bevan Brittan governance review findings included a review of HFL governance, which resulted in changes being proposed, as follows:
- Changes in the balance of the different types of board member (Council-nominated, HFL-nominated and independent directors) on Group and Homes boards
 - introducing a resident director to the Homes board
 - making Build and Living boards into operational boards rostered by HFL-nominated directors, who are members of the HFL executive team, with one Council-nominated director on the Build board only
 - strengthening the Council's role in clearing all appointments to HFL board (by the Council's Chief Executive, in accordance with authority deleted in the March 2020 Cabinet Member Decision Report) and the obligation placed on HFL to consult with the Joint Strategic Directors of Growth and Opportunity in order to obtain clearance from the Council's Chief Executive
 - refining the provisions with regard to quoracy, so that they work hand in hand with the proposed changes to board composition

All of these proposed changes, following consultation with OSP on 10th February 2021 and with the Council's Chief Executive, are reflected in the SHA appended to this report.

- 2.2 The proposed SHA also includes a number of amendments, when compared to the MoU, to account for changes in law (e.g. definition and provisions in respect of conflicts of interest) and changes in circumstances (e.g. HFL Homes is now a registered provider, whereas in the MoU registration is stated as an intention) since the MoU was drawn up. These amendments, in

principle and in the detail of their wording, are all as advised by the external legal teams of Council and HFL.

- 2.3 It is important that the effective date of the SHA goes hand in hand with resignations and appointment from/to the HFL boards, approved the Council CEO, and resolved on by HFL at its combined board meeting on 25th March 2021 to be effective from 12th April 2021. Therefore - subject to approval of the recommendations in this report – the SHA will be dated and thereby executed as a deed on 12th April 2021.
- 2.4 Some further amendments to the SHA will be recommended for adoption in due course, which will respond to other aspects of the governance report findings, including:
- updated terms of reference for OSP
 - adding an annex to the SHA written in plain English, setting out the key features of the operational transactions between Council and HFL. E.g. gateway approval process and annual business planning process
 - if changes to the SHA at this stage mean that changes to HFL company articles of association or other relevant legal documents, those would need to be identified and taken through HFL governance process to be approved before shareholder approval, in accordance with the Scheme of Delegation, which forms part of the SHA appended to this report
- 2.5 OSP will be consulted on these changes before they are recommended for approval and thereafter implemented in the form of a deed of amendment to the SHA and any amendments to HFL company articles or other relevant legal documents

3. FINANCE

- 3.1 No financial implications will arise as a result of changes reflected in the SHA recommended in this report when compared with the existing MoU.

4. LEGAL AND DEMOCRACY

- 4.1 Subject to the requisite authorisation provided by the Council for the changes to the Shareholders Agreement, the changes can be implemented by resolution of each of the Boards of the HFL group of companies.
- 4.2 The Council's Constitution requires that issues of an important or sensitive nature will be published on the Council's website for five clear days prior to the decision being taken (Constitution, Part 2, Section 3) by the Cabinet Member or Director concerned. It is suggested that this proposed decision is published on Officer Decisions in the interests of transparency. Any representations received during this period must be considered by the decision-maker before the decision is taken.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 The Council's response to the Bevan Brittan governance review was reported to Growth & Investment Panel on 18th November 2020.
- 5.2 The changes reflected in the SHA, when compared to the MoU, were report to Ownership and Stewardship Panel (OSP) on 10th February 2021.

- 5.3 The SHA appended to this report has been developed by officers of Council and HFL, supported by external legal advisors. At the meeting of its combined board on 25th March 2021, HFL resolved to enter into the SHA in the form appended to this report.

6. RISK MANAGEMENT

- 6.1 There are no new risks associated with this action. The changes reflected in the SHA, when compared to the existing MoU, form an important part of the Council's response to the BB governance review. Taking this action will help to mitigate the risks inherent in the maintenance and management of the relationship between Council and HFL.

7. EQUALITIES IMPACT ASSESSMENT

- 7.1 Due regard has been given to the Council's Equalities Duties, in particular with respect to general duties arising under the Equality Act 2010, section 149. Having regard to the need to advance equality in particular involves the need to remove or minimise disadvantages suffered by persons who share relevant characteristics which are connected with that characteristic.
- 7.2 Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty (PSED) to which the London Borough of Lambeth, as a public body, is subject in carrying out its functions, and that includes in the exercise of its powers under s.203. Those subject to the PSED must, in the exercise of their functions, have due regard to the need to:
- 1) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act; and,
 - 2) advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.
- 7.3 There is no evidence to suggest that the changes reflected in the SHA when compared to the existing MoU will have any impact on those with protected characteristics.
- 7.4 The Joint Delivery Plan (JDP) report to Cabinet of 15th March 2021 included a report on an independent programme level EQIA, the findings of which and action plans arising from which were published on 17th March 2021. The JDP report sets out how the EQIA report recommendations have been included in priority plans agreed between Council and HFL for the year ahead.

8. COMMUNITY SAFETY

- 8.1 None

9. ORGANISATIONAL IMPLICATIONS

Environmental

- 9.1 None

Health

- 9.2 None

Corporate Parenting

- 9.3 None

Staffing and accommodation

- 9.4 None

Responsible Procurement

9.5 None

10. TIMETABLE FOR IMPLEMENTATION

10.1 The table below details the stages and deadlines for implementing the recommendations:

10.2

Activity				Proposed Date
Date published on Forward Plan				N/A
Publication on Decisions online				31/03/21
Officer Decision				12/04/21
Dating and execution as a deed (the effective date of the Agreement)				12/04/21
Audit trail				
Consultation				
Name/Position	Lambeth directorate/division or partner	Date Sent	Date Received	Comments in para:
Councillor Matthew Bennett	Cabinet Member for Planning, Investment and New Homes	28/03/21	31/03/21	None
Eleanor Purser/Sara Waller	Strategic Director of Sustainable Growth and Opportunity	28/03/21	31/03/21	2
Greg Carson Legal Services	Legal & Governance	28/03/21	31/03/21	4
Adrian Bentley, Democratic Services	Legal and Governance	31/03/21	31/03/21	throughout
Andrew Forde-Johnston	Finance	28/03/21	31/03/21	Finance section

Report history	
Original discussion with Cabinet Member	12/03/21
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	N/A
Background information	The changes in the SHA when compared to the existing MoU were reported to OSP on 8 th February 2021. HfL Delivery Plan & HfL Corporate Plan

Appendices	1. LB Lambeth Homes for Lambeth Shareholders' Agreement April 2021

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board, and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Tom Branton, Director of Sustainable Growth and Opportunity

I approve the above recommendations:

Signature: _____ **Date:** _____

Post: Eleanor Purser/Sara Waller, Strategic Director of Sustainable Growth and Opportunity