
VARIATION OF 2003 TRANSFER AGREEMENT BETWEEN SCOTTISH BORDERS COUNCIL AND SCOTTISH BORDERS HOUSING ASSOCIATION

Report by Service Director Regulatory Services

SCOTTISH BORDERS COUNCIL

24 August 2017

1 PURPOSE AND SUMMARY

- 1.1 This report proposes that Council approve a variation of the Transfer Agreement between the Council, Scottish Borders Housing Association Limited ("SBHA") and Scottish Borders Building Services Limited dated 23 February 2003 ("the Transfer Agreement").**
- 1.2 The proposed variation to the Transfer Agreement between the Council and SBHA endorses the position agreed by Council on 2 March 2017, to permit SBHA to make changes to its Rules in order to future-proof and strengthen its governance structure by moving to a skills based Board of Management. The variation will delete Clause 6.1.1 of Part A of Schedule 2 of the Transfer Agreement which states that Council approval is required for any reduction in the level of Local Authority or tenant representation on SBHA's Board of Management. This variation ensures that the Transfer Agreement accurately reflects the position agreed by Council.

2 RECOMMENDATIONS

2.1 I recommend that Council:-

- (a) approves the variation to delete Clause 6.1.1 of Part A of Schedule 2 of the Transfer Agreement which currently states: "*The Association shall - not change the Rules of the Association so as to reduce the level of Local Authority or tenant representation or the ability of tenants to participate in the running of the Association (including, without limitation, the ability of tenants to participate in direct elections for the appointment of tenant Board or Committee Members) without the Council's prior written consent.*"; and**
- (b) authorises the Chief Legal Officer to enter into the required Minute of Variation.**

3 BACKGROUND

- 3.1 On 2 March 2017, a report was taken to Council which recommended that Council approve the changes to SBHA's Rules to future-proof and strengthen its governance structure by moving to a skills based Board. The report sought approval for an amendment to the Rules to remove the then current requirement that there be a dedicated number of Local Authority and tenant representatives on SBHA's Board of Management, which would enable SBHA to move to a skills based Board. This approval was given and the recommendation agreed.
- 3.2 SBHA had carried out a review to strengthen and future proof its governance structure. The result of the review included a proposal to move away from a constituency model to a skills based Board of Management. Community and tenant involvement would remain a key part to the new skills based Board and that Councillors and tenants would be encouraged to apply for Board Membership through the new skills based process. The proposed Rule change was agreed by SBHA's Board of Management on 7 December 2016 as it would future proof SBHA's governance structure, ensuring that it would be fit for purpose and contain an appropriate skill set.
- 3.3 Following the Council's agreement detailed in Paragraph 3.1 above, the Scottish Housing Regulator, who regulates SBHA insisted that SBHA retain a number of tenant member places on its Board of Management. SBHA have therefore agreed to retain four places on its Board dedicated to tenant members. Notwithstanding this, Council, by agreeing to the recommendations in the aforementioned report, agreed that they no longer wished to control the membership of SBHA's Board of Management.
- 3.4 In 2016 the Office of National Statistics announced the reclassification of Registered Social Landlords as public bodies for accounting purposes in Scotland - in part due to the control exercised over them by Local Authorities. In England the UK Government has legislated to remove local authority control mechanisms and it is currently considered that the Scottish Government will do something similar later this year. Consequently, it is likely that some variation to the Transfer Agreement would be required if the Scottish Government legislate on this matter.
- 3.5 Therefore in all of the circumstances it is considered appropriate to remove Clause 6.1.1 of Part A of Schedule 2 of the Transfer Agreement at this time. Currently this Clause states:

"The Association shall - not change the Rules of the Association so as to reduce the level of Local Authority or tenant representation or the ability of tenants to participate in the running of the Association (including, without limitation, the ability of tenants to participate in direct elections for the appointment of tenant Board or Committee Members) without the Council's prior written consent."

This would be done by way of a Minute of Variation which will delete only this Clause and ensure that the remainder of the Transfer Agreement remains in place.

4 IMPLICATIONS

4.1 Financial

There are no costs attached to any of the recommendations contained in this report.

4.2 Risk and Mitigations

This recommendation is a technicality required to ensure the Transfer Agreement accurately reflects what has already been agreed by Council. There is a risk that if Council do not agree to the recommendations, SBHA could, as a result of the ONS decision, be classified as a public body for accounting purposes due to the control mechanism in the Transfer Agreement.

4.3 Equalities

It is SBHA's Board of Management responsibility to ensure that recruitment to and composition of, the Board of Management follows Equalities best practice. There are no adverse impacts in respect to race, disability, gender, age, sexual orientation and religion or belief under the Equalities Act 2010 arising from the proposals in this report.

4.4 Acting Sustainably

It is considered that the report recommendations will have a neutral effect regarding any economic, social or environmental effects of the proposed Rules change.

4.5 Carbon Management

There are no direct carbon emissions impacts as a result of this report.

4.6 Rural Proofing

No adverse impact on the rural areas has been identified from the proposals contained in this report.

4.7 Changes to Scheme of Administration or Scheme of Delegation

No changes are required to either the Council's Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

5 CONSULTATION

The Chief Financial Officer, Monitoring Officer, Chief Legal Officer, Chief Officer Audit and Risk, Clerk to the Council and Chief Officer HR have been consulted and any comments received have been incorporated into the final report.

Approved by

Brian Frater

Service Director Regulatory Services Signature

Author(s)

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Background Papers: Transfer Agreement between the Council, Scottish Borders Housing Association Limited and Scottish Borders Building Services Limited dated 23 February 2003

Previous Minute Reference: Scottish Borders Council 2 March 2017

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Karen Scrymgeour can also give information on other language translations as well as providing additional copies.

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