

Council – 19th September 2016

Visionary Investment Enhancing Walsall Ltd - Governance Proposals

1. Summary

This report provides details of the request made to the Council by Walsall Housing Group (whg) to agree changes to the 2003 Stock Transfer Agreement, namely changes in governance and structure to the operation of the Visionary Investment Enhancing Walsall Ltd. ('VIEW') and its Board ('the VIEW Board'). whg's request has three elements:

- (i) reducing membership of the VIEW Board from 15 to 12, which includes reducing Council nominations from 5 to 4 members;
- (ii) re-wording VIEW's charitable objectives to meet the Charity Commission current requirements; and
- (iii) clarifying the existing relationship between VIEW and whg.

2. Recommendations

2.1 That Council give consideration to approving the change of governance arrangements for Visionary Investment Enhancing Walsall Ltd. ('VIEW') and its Board requested by whg, through a variation to part 2.1.2.2 of the 15th Schedule (Part II VAT Sharing Agreement) of the Stock Transfer Agreement dated 22 March 2003 as follows:-

- a) reducing membership of the VIEW Board from 15 members to 12 members, thus reducing Council nominations from 5 to 4 members;
- b) rewording of the 'charitable objectives' to meet the Charity Commission for England and Wales definition;
- c) removal of the wording: '*the Charity [VIEW] will not be under the control of the Parent [whg] and any of the other Companies*' and replacing with: '*the Charity's day to day activities will be controlled by the Board, subject to the Charity's status as a subsidiary of the Parent*'.

2.2 That Council note that should the change of governance arrangements in Recommendation 2.1 a) above be approved, the number of Council Senior Officers on the VIEW Board will be reduced from 2 to 1.

2.3 That Council delegates authority to the Head of Business Change, to negotiate and agree the final terms of the Deed of Variation to be

entered into with whg to record the changes set out in Recommendation 2.1 above.

3. Report Detail

3.1 VIEW was set up as a partnership between the Council and whg and is an exempt charity, registered society under the Co-operative and Community Benefit Societies Act 2014. The VIEW Board uses funding financed by VAT repayments on major works that whg carries out to boost regeneration in Walsall through a range of investments.

3.2 The Board consists of a maximum of 15 members, with 5 members appointed by whg, 5 by the Council and 5 independent members. The Council currently nominates its full quota of 5 Board Members to the Board. This includes 3 elected members nominated by Council and 2 senior officers nominated by the Chief Executive. At present, whg has nominated 4 VIEW Board members and there are 3 independent VIEW Board members, including the VIEW Board's Chair.

3.3 The Council received a letter from whg on 12 May 2016 (**Appendix A**) stating that:

- The current VIEW Board has agreed to reduce the number of Board Members from 15 to 12, which will reduce Council nominations from 5 to 4. (**Note** - whg and independent members would also be reduced from 5 to 4);
- To implement the changes, whg seek to amend the 2003 Stock Transfer Agreement, by way of a Deed of Variation.

3.4 whg have also requested, in addition to reducing the size of the VIEW Board, that other wording within clause 2.1.2.2 of the VAT Sharing Agreement within the 2003 Stock Transfer Agreement be modernised and updated as detailed in paragraph 3.5.

3.5 whg have submitted a draft Deed of Variation (**Appendix B**) and the main changes within that proposed Deed are:

- that the VIEW Board should be reduced from 15 members to 12 members, reducing the Council nominations from 5 to 4 members;
- rewording of the 'charitable objectives' to meet the Charity Commission requirements. **Note** - this amended wording still retains the same focus as before on health and wellbeing, unemployment and any other charitable objectives;

- the removal of the wording
'the Charity will not be under the control of the Parent and any of the other Companies'

and replacing with:

'the Charity's day to day activities will be controlled by the Board, subject to the Charity's status as a subsidiary of the Parent'. **Note** - that 'Parent' refers to whg.

This reflects the operation of the Board since Cabinet agreed to its creation in March 2005.

- 3.6 These changes will not alter the proportional representation that the Council has on the VIEW Board, or VIEW's aims and objectives. The changes have been requested following a governance review carried out by whg, which highlighted that the changes were required for VIEW to comply with best practice contained within the National Housing Federation Code of Governance, which it has adopted.
- 3.7 At Council in July 2016, a report was submitted to seek annual nominations to the VIEW Board. The report noted the request by whg to reduce the size of the VIEW Board and confirmed that this would be subject to this further report. It should be noted that Council resolved to retain 3 elected member positions on the VIEW Board and reduce the number of Senior Officer positions by 1, subject to the decision taken by Council in September 2016.

4. Legal Implications

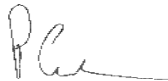
- 4.1 Legal Services have been consulted about the changes proposed by whg and have advised that a reduction from 15 to 12 VIEW Board members, rewording of the Charitable objectives, and the removal and replacement wording about VIEW's control and day-to-day activities (at clause 2.1.2.2 of the VAT Sharing Agreement) do not appear to create any adverse risks and implications for the Council.
- 4.2 Legal Services will assist Officers to ensure that the proposed Deed of Variation correctly records agreed changes to the 2003 Stock Transfer Agreement for VIEW's governance and structure and that it is properly executed by being sealed by both parties.

Background Papers

- 2003 Housing Stock Transfer Agreement
- Cabinet Report 2 March 2005 'VAT shelter for housing regeneration' (and appendices)
- Council Report – 21st July 'Visionary Investment Enhancing Walsall Board Ltd – Appointment of Representatives

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9 September 2016

Appendix A – whg request letter

Paul Sheehan
Chief Executive
Walsall Council
The Civic Centre
Darwall Street
Walsall
WS1 1TP

100 Hatherton Street

Walsall
WS1 1AB

Please reply to: Karen Marshall
Direct Line: 01922 425705
e-mail:karen.marsahl@whgrp.co.uk

12 May 2016

Dear Paul

VIEW Rule Change

Following the governance review carried out by whg which included changes to comply with the National Housing Federation Code of Governance, the VIEW Board has now agreed to adopt the Code too. In order to comply with the Code the Board has agreed that the size of the Board should be reduced from 15 members to 12 members and that the number of Board members appointed by the Council be reduced from five to four (as well as those appointed by WHG Board and the VIEW Board also being reduced from five to four).

As the size of the VIEW Board and the composition is set out in the Transfer Agreement, a deed of variation will be required before the Rules can be changed to reflect the Board's decision. I understand that Neil Holyhead, one of the Council appointed VIEW Board members, has been involved in discussions with your colleagues in the Legal and Democratic Services Teams about how the deed of variation should be dealt with. I will therefore continue to liaise with Neil regarding the best way to take this forward to ensure we obtain the Council's formal agreement. I will then arrange for a deed to variation to be drawn up.

Our proposed timetable for completing the Rule change is to hold a General Meeting, in September 2016 (at the same time as the VIEW AGM). As this will entail reducing

the Council appointed Board members from five to four, you may wish to invite elected members to take this in to consideration when making any changes to the Board nominations following the recent elections. One option would be to nominate four Board members, holding one place vacant pending the changes. Alternatively we would require the Council to advise in due course, which of the members will stand down in September.

I look forward to hearing from you regarding the preferred course of action. In the meantime however if there is any further information that you need about the proposed Rule change please let me know.

Yours sincerely

Karen Marshall

Director of Governance and Compliance

Appendix B – Proposed Deed of Variation

Dated..... 2016

WALSALL METROPOLITAN BOROUGH COUNCIL

and

WALSALL HOUSING GROUP LIMITED

DEED OF VARIATION

of a

VAT Sharing Agreement
relating to a Transfer of the former Housing Stock of
Walsall Metropolitan Borough Council dated 27 March 2003

PARTIES

- (1) **WALSALL METROPOLITAN BOROUGH COUNCIL** of The Civic Centre, Walsall, West Midlands WS1 1TP (**the “Council”**).
- (2) **WALSALL HOUSING GROUP LIMITED** incorporated and registered in England and Wales with company number 04015633 whose registered office is at 100 Hatherton Street, Walsall, WS1 1AB (**“WHG”**).

BACKGROUND

- (A) By an Agreement (**“the Principal Agreement”**) dated 27 March 2003 made between the Council (1) and WHG (then known as “Walsall Housing Trust Limited”) (2) and the other parties which are referred to in recital (C) of this Deed below, the Council agreed to transfer its housing stock to WHG at the price and subject to the terms and conditions therein stated.
- (B) Immediately following the completion of the Principal Agreement and in pursuance of clause 19.4.1 of the Principal Agreement, the Council (1) and WHG (then known as “Walsall Housing Trust Limited”) (2) and the other parties which are referred to in recital (C) of this Deed below, entered into a VAT Sharing Agreement on 27 March 2003 (**the “VAT Sharing Agreement”**) in the form which is set out in Part II of Schedule 15 of the Principal Agreement.
- (C) WHG is the successor in title to Bloxwich Housing Trust Limited, Willenhall Housing Trust Limited, Darlaston Housing Trust Limited, Aldridge And Brownhills Housing Trust Limited and Central Walsall Housing Trust Limited, who were the other parties to both the Principal Agreement and the VAT Sharing Agreement.
- (D) The Council and WHG (**the “Parties”**) now wish to amend the VAT Sharing Agreement as set out in this deed with effect from the date of this deed (**the “Variation Date”**).

AGREED TERMS

1. TERMS DEFINED IN THE AGREEMENT

In this deed, expressions defined in the Agreement and used in this deed have the meaning set out in the Agreement. The rules of interpretation set out in the Agreement apply to this deed.

2. VARIATION

2.1 With effect from the Variation Date the Parties agree that the current clause 2.1.2.2 of the VAT Sharing Agreement shall be deleted and replaced by the following new clause 2.1.2.2:

2.1.2.2 the remaining one quarter of the balance shall be paid by the Parent to Visionary Investment Enhancing Walsall Limited, a registered society with the Financial Conduct Authority with register number 29907R (**the “Charity”**) subject to the following provisions:

- the Charity shall have charitable objectives to carry on for the benefit of the community:
 - the improvement of the health and wellbeing of poor people or for the relief of aged, disabled (whether physically or mentally) or chronically sick people through the provision and management of facilities and services;
 - the relief of unemployment for the benefit of the public in such ways as may be thought fit, including assistance to find employment; and
 - any other charitable object that can be carried out from time to time by a registered society.
- the Charity shall have a board of twelve people who shall be appointed as follows:-
 - four by the Council; and
 - four by the Parent; and
 - four by the board of the Charity as independent board members.”

PROVIDED THAT none of the independent board members shall be close relatives of directors or employees of the Parent, or those who have held such positions within a period of twelve months prior to their nomination. The Parent shall consult with the Council before appointing the independent board members.

- the only local authority persons (as defined in section 69(5) and (6) of the Local Government and Housing Act 1989) shall be the board members that are appointed by the Council.
- the Charity's day to day activities will be controlled by the Board, subject to the Charity's status as a subsidiary of the Parent;
- the Charity's membership arrangements shall reflect the split on the board.

2.2 The VAT Sharing Agreement shall continue in full force and effect from the Variation Date as varied by clause 2.1 of this deed.

3. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

4. JURISDICTION

Each of the Parties irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

5. TESTIMONIUM

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The **COMMON SEAL** of

**WALSALL METROPOLITAN BOROUGH
COUNCIL** was affixed to this Deed
in the presence of:

.....
Authorised Signatory

The common seal of
WALSALL HOUSING GROUP LIMITED
was hereunto affixed in the presence of:

.....
Authorised Signatory