

## **Council – 19th November 2012**

### **Board Composition and Membership of Walsall Housing Group**

#### **1. Summary of report**

- 1.1.1 Council was most recently asked to agree to a change in the structure of the Walsall Housing Group (whg) board. The request was declined and an alternative proposal was approved.
- 1.1.2 This report informs Council of the decision made by the whg Board to reject the alternative board structure proposed by Council and seeks 3 nominations for the whg board

#### **2. Recommendations**

- 2.1 That Council nominates 3 Council members to represent Walsall Council and sit on the Board of whg

#### **3. Report detail**

- 3.1 Whg's request to amend the composition of its board has been presented to full Council on 3 occasions: 9<sup>th</sup> January 2012, 23<sup>rd</sup> February 2012 and 23<sup>rd</sup> May 2012 (Appendix 1 – copy of the latest Council report dated 23<sup>rd</sup> May)
- 3.2 Council resolved not to approve the request of whg to amend the composition of the Board from 3 Council representatives to 1
- 3.3 Council asked instead that whg consider an alternative board structure comprising 10 directly elected tenants, 1 Council nominee and 1 independent (Appendix 2 – copy of letter sent to whg advising of Council resolution)
- 3.3 Whg explained in a written response to the Council that they were not able to make the suggested change (Appendix 3 – copy of whg's letter)
- 3.4 At an informal forum between Members and whg held on 24<sup>th</sup> September 2012, whg explained the reasons for the change in board composition requested and why the alternative suggestion by members could not be implemented
- 3.5 With no agreement reached to change the board composition, the Council retains the right to nominate 3 Council Members to sit on the board of whg,

#### **4. Legal implications**

- 4.1 The Council's consent is required to any changes to whg's Memorandum and Articles of Association both as Council Member in accordance with the Articles of Association of whg and in accordance with the terms and conditions of the original Stock Transfer Agreements dated 22<sup>nd</sup> March 2003.

The 6<sup>th</sup> Schedule Part 11 contains the following covenant by Walsall Housing Group to the Council:-

**“PARENTS MEMORANDUM AND ARTICLES OF ASSOCIATION**

Not to change the Memorandum and Articles of association of the Parent so far as they relate to the Parent’s objects and powers and to local authority or tenant representation without the Council’s prior consent in writing such consent not to be withheld or delayed in relation to all reasonable advice issued by the Housing Corporation concerning the governance of the classes or Registered Social Landlords **PROVIDED ALWAYS** and it is agreed by the Council that, where the Council shall have given consent in writing to such a change to the Memorandum and Articles of Association of the Parent, the Council, in its capacity as a member of the Parent ,shall vote in favour of that amendment at the relevant General Meeting of the Parent”

- 4.2 If consent in not given by the Council as a member of whg to any propose changes, the necessary Special resolution required to effect such changes cannot be passed by the members of whg.
- 4.3 In accordance with whg’s current memorandum and Articles of Association, the Council has the right to nominate 3 Council members to sit on the board of whg

**Author**

Andrea Potts

Head of Housing

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Tim Johnson

Executive Director

# **Annual Council – 21st May 2012**

## **Board Composition and Membership of Walsall Housing Group**

### **1. Summary of report**

- 1.1 To advise Council of a request made by Walsall Housing Group Limited (“whg”) to proposed changes to reduce local authority and tenant representatives on the WHG Board, and to seek authority from the Council to vote in favour of this resolution.
- 1.2 As detailed in paragraph 3 below and Annex 2 of this report, this proposal does not impact on the Council’s membership of whg as a company and as such does not impact on its voting rights at General Meetings of whg. This proposal only relates to the Council’s representation on the Board. In practice, the Council currently only has one nominated representative on the Board.

### **2. Recommendations**

- 2.1 That Council approve whg’s request to change the composition of the Board, reducing the number of Council representatives on the Board from 3 to 1.
- 2.2 That Council nominates a Council member to represent Walsall Council and sit on the Board of whg.
- 2.3 That authority be given to that nominated representative to attend the General Meeting of whg at which the Special Resolution to amend the Memorandum and Articles of Association of whg is proposed and vote in favour of the proposed Special Resolution to amend the Memorandum and Articles of Association of whg.

### **3. Background**

- 3.1 The Board has posts for 15 representatives and the existing structure allows for these posts to be made up of:
  - 5 tenant members (one from each local committee)
  - 2 additional tenant members, nominated by the Walsall Tenants and Residents Federation (WTRF) members
  - 3 members nominated by Walsall Council
  - 5 independent members

The National Housing Federation Code of Governance recommends a maximum number of posts on the Board of 12.

A request was received from whg in May 2011 to reduce the number of Council representatives who sit on the Board to enable whg to comply with this Code of Governance. WTRF has already agreed to relinquish its two places on the Board.

- 3.2 whg are proposing to reduce the number of Council representatives on its Board to 1, so that its Board is made up of 12 posts in total as follows:
- 5 tenant members (one from each local committee)
  - 1 member nominated by Walsall Council
  - 6 independent members
- 3.3 whg's current Board and committee structure are set out in the Annex 1 of this report. Details about current Council representatives have been added. The Council currently only has one nominated representative on WHG Board. Annex 2 of this report provides further contextual information about whg's governance arrangements and whg's relationship with the Council.
- 3.4 The proposed changes do not affect the voting rights of the Council at General Meetings of whg. At the present time, the Council's nominated representative has the right in its capacity as a member of the Company to one-third of the votes at a General Meeting of whg if a poll vote is demanded. A poll vote may be demanded by the Council's nominated representative acting alone. The effect of this voting right is that the Council retains control over major decisions relating to housing stock.
- 3.5 In line with the regulatory framework for social housing, whg must ensure effective governance arrangements that deliver its aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. However, it is keen to ensure that the driver to reduce the size of the Board is not seen as bureaucracy impeding community engagement. Other Council representation (see 3.6 below) and partnership working between whg and the Council at elected member and officer levels is unchanged.
- 3.6 The proposed changes to the Board do not reduce the number of the Council's representatives on the 5 local committees within whg or on the Board of Visionary Investment Enhancing Walsall Ltd. (VIEW).

#### **4. Legal implications**

Under the terms and conditions of the original Stock Transfer Agreements entered into by Walsall Council in March 2003, whg must obtain the consent of Walsall Council to any changes to whg's Memorandum and Articles of Association. This consent is now being sought.

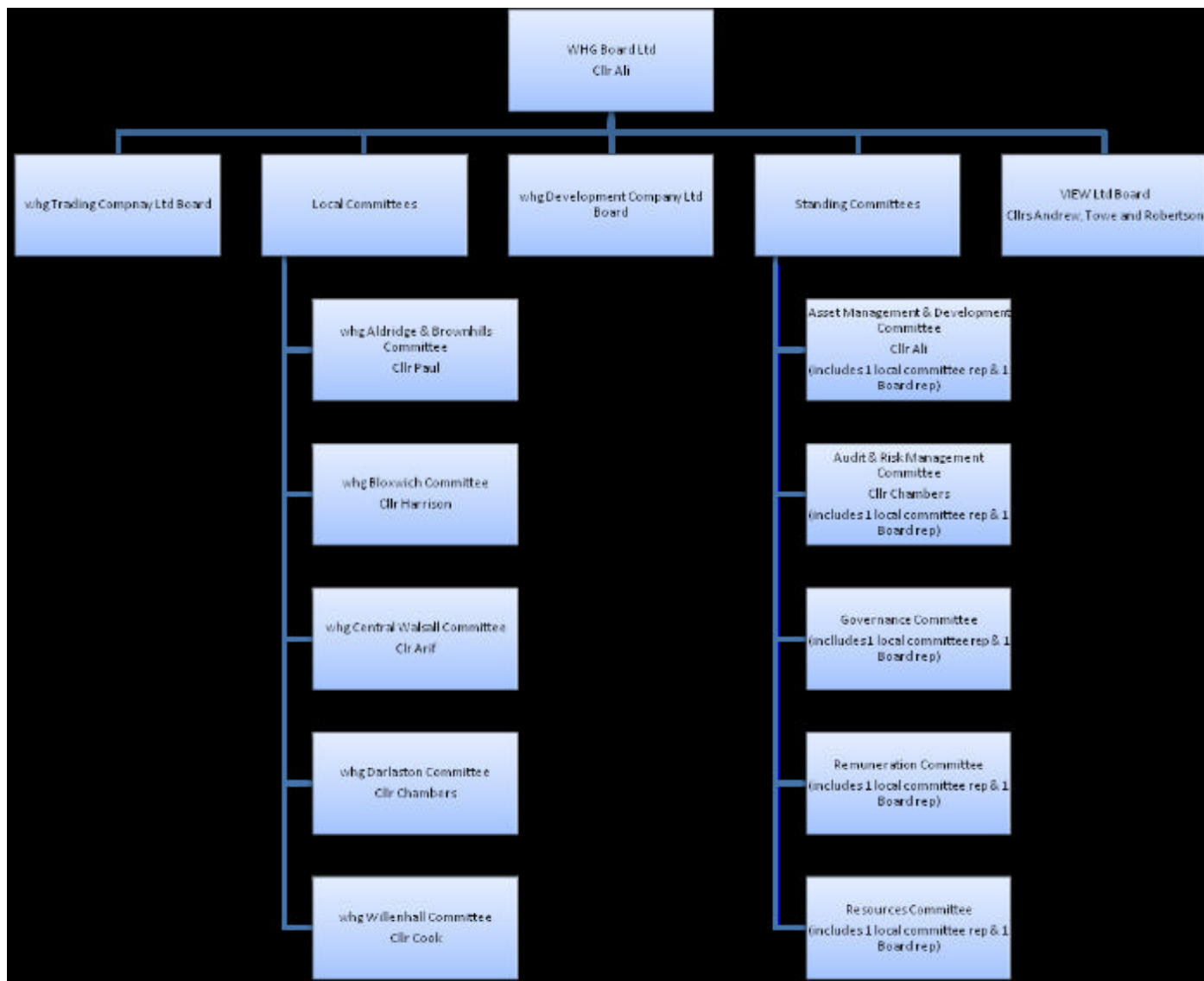
#### **Author**

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Tim Johnson  
Executive Director

Annex 1  
Walsall Housing Group  
Board & Committee Structure



Walsall Housing Group Limited

Governance Structure

1. The relationship between the Council and whg is underpinned by the original Transfer Agreement and the Partnership Agreement entered into on 27<sup>th</sup> March 2003.
2. It was a term of this Transfer Agreement that a Partnership Agreement be entered into “to create a lasting partnership and working relationship” between the Council and whg for the benefit of the people of Walsall.
3. whg is a company limited by guarantee which has “members” rather than “shareholders”. It also has a Board of directors who deal with strategic matters and delegate day to day management to the Group Executive team .
4. The Council’s consent is required to any changes to whg’s Memorandum and Articles of Association both in its capacity as a member of the Company in accordance with the Articles of Association of whg and in accordance with the terms and conditions of the Transfer Agreements dated 27<sup>th</sup> March 2003.
5. The types of the decisions made by the Board are:
  - Adoption of revised Standing Orders
  - Approval of key policies
  - Approval of Management Accounts and Business Plans
  - Approval of new developments or acquiring/selling properties
  - Appointment of new members to the board and to all the committees
  - Rent and service charge policy; Affordable rents; Annual rent increase
  - Treasury management policy
  - New initiatives e.g. retrofit/eco friendly projects

Board decisions are made on a majority of votes cast or by consensus.

6. Members of the Company can delegate powers to the directors, approve major transactions and change the constitution of the company.
7. The structure of whg was formed with the Council having representatives on its Board of directors and the Council in its own right being a member of the Company.
8. Since 2003 the number of directors sitting on the Board is 15 with the Council being entitled to nominate 3 directors. The NHF Code of Governance now recommends a maximum number of Board posts of 12. To effect this, whg wish the Council to reduce its number of representatives on the Board to 1.

9. This proposal does not affect the Council as a member of the Company. The proposed changes do not affect the voting rights of the Council at General Meetings. At the present time, the Council has the right as Council Member to one-third of the votes at a General Meeting of whg if a poll vote is demanded. A poll vote may be demanded by the Council Member acting alone, the effect of this being that the Council retains control over major decisions relating to housing stock.



# Walsall Council

## Regeneration Services

**Tim Johnson**  
*Executive Director*

Your Ref:  
Our Ref:  
Date: 29 May 2012  
Direct Line: 01922 654599/652561  
Please ask for: Andrea Potts

Mr G Fulford,  
Group Chief Executive,  
Walsall Housing Group,  
100 Hatherton Street,  
Walsall.  
West Midlands  
WS1 1AB

Dear Gary,

### **Board Composition and Membership of Walsall Housing Group**

Whg's request to amend the composition of its Board from 3 Council representatives to 1 was presented to Full Council on 23rd May 2012 (copy of report and decision attached).

Council did not approve this request and instead asked that whg consider the following board structure:

- 10 directly elected tenants
- 1 Council nominee
- 1 independent member

I would be grateful if you would consider this request and advise me accordingly, the details of which will form the basis of a future report to Council. If you require any further information or clarification, please contact me on 01922 654599 or 01922 652561.

The nomination of Council representation to the Board has been deferred pending your response.

Yours sincerely,

**Andrea Potts,**  
**Head of Housing.**



100 Hatherton Street  
Walsall  
WS1 1AB

Please reply to: Gary Fulford  
Direct Line: 01922 426300  
e-mail: [helen.lane@whgrp.co.uk](mailto:helen.lane@whgrp.co.uk)

6 June 2012

Mrs Andrea Potts  
Head of Housing  
Walsall Council  
The Civic Centre  
Darwall Street  
Walsall  
WS1 1TP

Dear Andrea

### **Board Composition and Membership of Walsall Housing Group**

Thank you for your letter of 29 May 2012 confirming that Walsall Council had not approved whg's request to reduce the number of Council representatives to the WHG Board from three to one.

I note that the Council asked instead that whg consider the following board structure:

- 10 directly elected tenants
- 1 Council nominee
- 1 independent member

Following discussion at its meeting on 29 May 2012, the Board agreed unanimously to reject the Council's proposal. This was for a number of reasons, as follows:

- Any Board composition needs to be acceptable to our regulator, the Homes and Communities Agency. Historically, the regulator has required at least one third independent members.
- The new standards framework by which we are bound, states that: *"Registered providers shall ensure effective governance arrangements that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner."*
- There is no business case for completely changing the composition of our Board in the manner suggested by the Council. The Homes and Communities Agency regard our organisation as being well governed under the current

Website: [www.whg.uk.com](http://www.whg.uk.com) Tel: 0300 555 6666



arrangements. Board members need to demonstrate a full range of skills and experience to act as the directors of a multi-million pound company. The current balance of tenants and independent members gives us that skills and experience mix.

- The proposed changes are highly unlikely to satisfy our funders that the Board has the requisite skills to oversee whg and manage the inherent risks in a large business. Our current loans exceed £200m and we have further facilities available to continue our development and regeneration activities in Walsall. The governance arrangements proposed by the Council would result in our funders reviewing these arrangements.
- It is not considered that the arrangements the Council is suggesting would result in a stronger Board that is better equipped to provide good governance of the organisation in the current economic and regulatory environment and benefit whg's tenants and the people of Walsall.
- Very few Registered Providers view direct elections amongst tenants as an effective way of either selecting new board members or engaging effectively with residents and local communities. whg can already demonstrate significant tenant involvement in its governance structures on the local committees, on which there are 25 tenants and five Council members. In addition to this, tenants are involved in monitoring and scrutinising the running of the organisation, for example on the Housing Service Panels and as tenant inspectors
- Current best practice in the sector is for boards to plan their succession by building capacity amongst a pool of potential new members drawn more widely than from a single interest group. Inviting applications and selecting tenant local committee members from our pool of 'involved' tenants rather than holding elections enables the local committees to be a training ground for tenant board members.

Given that this proposal is not acceptable to the WHG Board, we ask that you reconsider our request to reduce the Council nomination to one for the reasons stated in our previous correspondence. We note that the Council proposal does indeed suggest only one Council nominee, which was the modus operandi for 2011/12 and more closely reflects the average attendance over the previous years. Alternatively, please confirm your wish to remain with three nominations of elected members or officers or other individuals representing the Council.

Yours sincerely



**Fred Bell**  
Chair – WHG Board