

<b>Cabinet</b>	 <b>TOWER HAMLETS</b>
25 October 2023	
<b>Report of:</b> Stephen Halsey, Chief Executive Officer	<b>Classification:</b> Unrestricted
<b>Tower Hamlets Homes Articles of Association and Board of Directors</b>	

<b>Lead Member</b>	<b>Councillor Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding</b>
<b>Originating Officer(s)</b>	Nicola Klinger, Programme Lead – Housing Management Strategic Review
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	No
<b>Reason for Key Decision</b>	This report has been reviewed as not meeting the Key Decision criteria.
<b>Forward Plan Notice Published</b>	21 August 2023
<b>Exempt information</b>	None
<b>Strategic Plan Priority / Outcome</b>	1. Homes for the future 2. Invest in public services

## Executive Summary

On 1 November all housing management services will transfer back to the council and the Management Agreement between the council and Tower Hamlets Homes Limited (THH) (the Company) will end.

The Company will need to follow an administrative process to wind-up and close the company. To enable this process, this report recommends that the Shareholder (Executive of the Council) appoints a new board of directors and approves adoption of a new set of Tower Hamlets Homes Limited Articles of Association to simplify the composition of the board. It also recommends that a members' voluntary liquidation process is completed to wind up the Company.

## Recommendations:

The Mayor in Cabinet is recommended to:

1. Agree to the Tower Hamlets Homes Limited Articles of Association to be changed to the articles set out in Appendix One.

2. Appoint a board of three directors, comprised of council officers and members, as set out in s3.9.16.
3. Nominate three board directors and nominate one of these board directors to be Chair of the Board. .
4. Agree the process for winding up Tower Hamlets Homes Limited will be via a members' voluntary liquidation.

## **1 REASONS FOR THE DECISIONS**

1.1 On 1 November all housing management services will transfer back to the council and the Management Agreement between the Council and Tower Hamlets Homes Limited (THH) will end.

1.2 However, the Company will continue to exist for a short time to enable compliance with law (e.g., Companies Act 2006) and compliance with registrar (Companies House) rules.

### **1.3 Board of directors**

1.3.1 Although THH will no longer provide any services and will cease trading from the 1 November 2023, the Company will need to follow an administrative process to wind-up and close the Company. This must be undertaken by the board of directors.

1.3.2 All current board members will resign on the 26 October 2023 at the Company's Annual General Meeting when the Management Agreement ends, and therefore a new board must be appointed to comply with Company Law.

1.3.3 Under the current Articles of Association (the Articles), this would mean appointment of 10 Board members including councillors (Council Board Members), Tenant Board Members and Independent Board Members. The recruitment process for this would take some time.

1.3.4 Additionally, both a Tenant Board Member and two Council Board Members must be present at every meeting to form a quorum. This means relying on the goodwill of volunteers to engage in the administrative process of winding-up a company.

1.3.5 Therefore, this report sets out in s3.9 options for different board compositions. They are:

1. Retain current board composition
2. Appoint one board director
3. Appoint board of three directors (recommended)

1.3.6 A decision is required to establish the board composition and to nominate directors to the board. A simplified board is recommended as this will help speed along the final closure of the Company.

#### **1.4 Articles of Association**

1.4.1 Adopting a new set of Articles of Association is the first necessary step if the board were to be constituted in a different way. For example, to have fewer board members.

1.4.2 The Articles set out the minimum and maximum number of board directors and the number of directors required to form a quorum.

1.4.3 The proposed new Articles set out in Appendix 1 reduce the minimum number of board directors to one (with no maximum) and the quorum to one board director. This gives the Executive as Shareholder flexibility to appoint any number of board directors deemed required as long as there is at least one board director.

1.4.4 A decision is required from the Shareholder (the Executive of the Council) to adopt a new set of Articles.

1.4.5 Subsequent to the decision of the Shareholder, should new Articles be approved, these will need to be adopted by the board and registered with Companies House in accordance with the law.

#### **1.5 Wind-up of the Company**

1.5.1 There are two processes that could be undertaken to wind-up the Company.

1.5.2 The first option is a member's voluntary liquidation, which uses a liquidator to provide assurance that the liabilities and assets of the Company have been appropriately dealt with.

1.5.3 The second option is to follow the process to strike the company off the register, which does not use a liquidator and required waiting for the Company to have not be trading for at least three months.

1.5.4 A member's voluntary liquidation process is recommended as it will provide the best and because the strike-off process requires a three-month period of the Company not trading before the process can commence.

1.5.5 The board appointed will have responsibility for overseeing the preferred process as indicated by the Executive.

## **2 ALTERNATIVE OPTIONS**

2.1 The board composition could remain as it is or indeed be constituted in any way, as long as there is at least one director.

- 2.2 The current Articles of Association could remain as they are without any amendments, however this would risk the effective wind up of Tower Hamlets Homes Limited. This is due to requirements placed on appointment of Independent and Tenant Board Members, and attendance of at least one Tenant Board Member and two Council Board Members to form a quorum.
- 2.3 The new proposed set of Articles of Association could set a different minimum or maximum of number of directors. However, the proposed set of Articles would not prevent the Shareholder appointing any number of directors (and changing this number from time to time), rather it just ensures the minimum is one director to comply with Company Law.
- 2.4 The wind-up process must either be undertaken via members' voluntary liquidation or strike off the Company from the Companies Register; these are the only two available options. The members' voluntary liquidation process is recommended for reasons detailed in the report.

### **3 DETAILS OF THE REPORT**

- 3.1 Tower Hamlets Homes (THH) Limited (the Company) was set up in July 2008 as an Arms-Length Management Organisation (ALMO) to manage the Council's housing stock. It is wholly owned by the Council and has its own executive board which manages the day-to-day activities of the company.
- 3.2 On 22 February 2023, the Mayor in Cabinet authorised the transfer of housing management services from THH to the Council.
- 3.3 Services provided by THH will return to the Council on 1 November 2023, with the Management Agreement between Tower Hamlets Homes Limited ending on 31 October 2023.
- 3.4 Consequently, the company structure of Tower Hamlets Homes Limited will no longer be required and a voluntary liquidation process to wind down the Company will be undertaken.
- 3.5 Currently, the board composition (as set out by the Articles of Association) is 10 Board Members. This includes four Councillors of the Council (Council Board Members), three Tenant Board Members (at least one of which shall be a leaseholder) and three Independent Board Members.
- 3.6 No Board Members are remunerated and provide their time on a voluntary basis.
- 3.7 It is expected that existing Board Members will retire on or before the transfer date.
- 3.8 The Executive of the Council will therefore need to appoint directors to the board to oversee the wind-down process and ensure that this is completed in accordance with company legislation.

### 3.9 **Board composition**

- 3.9.1 The company must have a board of directors (or a singular director) in any scenario. This is a legal requirement and the steps to wind down the process can only be undertaken by the board, in conjunction with the Shareholder.
- 3.9.2 The function of this board would be to oversee and take decisions on the wind-up process only.
- 3.9.3 The board will be required to take decisions on whether the company is considered solvent and advise the Shareholder of this. It will need to ensure that all liabilities are settled and that all assets are returned to the council (as Shareholder).
- 3.9.4 The following sets out three options for the board of directors of the pre-dissolution shell company.
- 3.9.5 Option One – retain current board composition
- 3.9.6 Currently, the board composition (as set out by the Articles of Association) is 10 Board Members. This includes four Councillors of the Council (Council Board Members), three Tenant Board Members (at least one of which shall be a leaseholder) and three Independent Board Members.
- 3.9.7 At least one Tenant Board Member and two Council Board Members must be present at every board meeting to form a quorum.
- 3.9.8 Therefore, if no changes are made to current board composition as set out in the current Articles of Association, new board directors in the manner stated above would need to be recruited which may take some time and delay the process.
- 3.9.9 Additionally, no Board Members are remunerated and provide their time on a voluntary basis. Therefore, the Council would be reliant on the goodwill of at least one Tenant Board Member attending every meeting to form a quorum and, in any event, may well not get any volunteers as the only activities will be the closure of the company apparatus.
- 3.9.10 Option Two – one board director
- 3.9.11 There is an option to appoint one board director. This option requires adoption of the Articles set out in Appendix 1.
- 3.9.12 The sole board director would take all decisions alone and full responsibility for any decisions would sit with the sole director.
- 3.9.13 There are no legal restrictions on who could be appointed as a sole director (other than those set out in Companies Act 2006 which apply to all company directors), however as the director would be acting to complete an

administrative task on behalf of the Shareholder, it is recommended that this is a council officer or member with the skills and ability to dedicate time to completion of the wind-up process.

3.9.14 The director must be able to take on full sole responsibility for all board decisions and advising the Shareholder on matters such as if the company is solvent.

3.9.15 In this model, the Mayor (Shareholder) could become the sole director of the company. This would mean fulfilling dual roles in the process – both those of a director and that of a Shareholder. Effectively, this would mean having to advise as a director and receive that advice as a Shareholder simultaneously, which removes a layer of separation of process and associated protection in the decision-making. However, this also means that the Mayor would have full oversight of the wind-down process.

### 3.9.16 Option 3 – Appoint new smaller board of three members (recommended)

3.9.17 The preferred option is to form a smaller board than the current board, but that has more than one director. Generally, it is preferable to have an odd number of board directors as this avoids inability to pass resolutions where two board members disagree. Therefore, it is assessed that the optimum number of board directors in this smaller board would be three.

3.9.18 The advantage of having a board which consists of more than one director is that directors can discuss and scrutinise recommendations together and make decisions on this basis. This would be evidenced through minutes of board meetings. It also means that if one board director is not able to attend a meeting, the other two will form a quorum.

3.9.19 In this option multiple board directors with the skills and time to dedicate to the wind-up process will need to be appointed. As in option 2, there are no legal restrictions on who could be appointed as a director (other than those set out in Companies Act 2006 which apply to all company directors), however as the directors would be acting to complete an administrative task on behalf of the Shareholder, it is recommended that the directors are council members or officers with the skills and ability to dedicate time to completion of the wind-up process.

3.9.20 The Articles as set out in Appendix 1 would enable the Shareholder to appoint any number of directors as long there is at least one director.

## 3.10 **Process to wind-up the Company**

3.10.1 There are two options available to wind up (liquidate) a private company limited by guarantee.

3.10.2 Option 1 (recommended): Members' voluntary liquidation (the company can pay its debts but the shareholder wishes to close it)

3.10.3 This process is appropriate for THH as it is for companies which are solvent, and the Shareholder does not wish to run the business any more.

3.10.4 It gives the Shareholder reassurance that all outstanding matters such as creditors are resolved, and that due process is followed in removing the company from the register.

3.10.5 The process for this is as follows:

- Board of Directors review the company's assets and liabilities
- Board of Directors make a declaration of solvency (they believe it can pay its debts), signed before a solicitor or 'notary public'
- Call a general meeting with the Shareholder no more than 5 weeks later and pass a resolution for voluntary winding up
- At that meeting appoint an authorised insolvency practitioner as a liquidator, who will then take charge of winding up the company.
- Advertise the resolution in The Gazette within 14 days.
- Send the signed declaration to Companies House within 15 days of passing the resolution.

3.10.6 As soon as the liquidator is appointed, they'll take control of the business. The liquidator is an authorised insolvency practitioner or official receiver who runs the liquidation process.

3.10.7 Option 2: Strike off the company from the Companies Register

3.10.7.1 This option is only available to companies which have not traded for three months and therefore the process could not commence any earlier than February 2024.

3.10.7.2 It relies on the board to ensure that all assets and liabilities are settled and a final set out accounts are prepared and audited.

3.10.7.3 As a first step, all assets must be returned to the Shareholder and debts settled.

3.10.7.4 Then, directors must file an application to strike off and send a copy within 7 days to anyone who could be affected including:

- members (usually the shareholders)
- creditors
- employees
- managers or trustees of any employee pension fund
- any directors who did not sign the application form

3.10.7.5 The director(s) must also ensure that final statutory accounts and a Company Tax Return is sent to HMRC and pay all Corporation Tax and any other outstanding tax liabilities.

3.10.7.6 Once the application is accepted by Companies House, the request for the company to be struck off will be published as a notice in The Gazette and if no-one objects within 2 months, the notice will have passed and a second notice will be published so that the company does not legally exist anymore.

#### **4 EQUALITIES IMPLICATIONS**

4.1 None.

#### **5 OTHER STATUTORY IMPLICATIONS**

5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

5.2 No other statutory implications have been identified.

#### **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

6.1 There are no financial implications emanating from this report which seeks to amend Tower Hamlets Homes Articles of Association as part of the process to wind down Tower Hamlets Homes and to appoint to a Transition Board.

#### **7 COMMENTS OF LEGAL SERVICES**

7.1 The Council's legal housing management functions will be undertaken by the Council rather than Tower Hamlets Homes from the transfer date. However, the company structure of THH will remain as a shell for a short period afterwards because there are several legal and practical steps that need to be undertaken to ensure compliance with the law when a company is formally dissolved. The change in the articles will allow for the appointment of a simplified board and ease the dissolution process.

7.2 Changes to the articles and to the members register as voted in by the company will need to be registered with Companies House in the usual way,

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None.

### **Appendices**

- None.

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None.

### **Officer contact details for documents:**

N/A