

## Appendix

<b>TITLE</b>	<b>Shareholders Committee</b>
<b>FOR CONSIDERATION BY</b>	The Executive on Thursday, 14 March 2024
<b>WARD</b>	(All Wards);
<b>LEAD OFFICER</b>	Deputy Chief Executive - Graham Ebers
<b>LEAD MEMBER</b>	Leader of the Council and Executive Member for Housing - Stephen Conway

### **PURPOSE OF REPORT (INC STRATEGIC OUTCOMES)**

Authorisation to form a Committee of Executive to act as Shareholder representative to enhance governance for housing companies owned by Wokingham Borough Council.

### **RECOMMENDATION**

That the Executive:

- 1) Approves the creation of Shareholder Committee as detailed in this report to ensure that its housing companies act in the interests of the Council as shareholder and /or lender and contribute to the Council's objectives.
- 2) Notes the draft Terms of Reference at set out at Appendix 1 and delegates approval of final terms to the Deputy Chief Executive and Director of Resources & Assets in consultation with the Leader of the Council.
- 3) Delegates authority to the Deputy Chief Executive and Director of Resources & Assets to agree final terms and enter into each Memorandum of Agreement with each relevant company.

### **EXECUTIVE SUMMARY**

1. Wokingham Borough Council is committed to maintaining strong and robust governance to ensure the decisions that are taken are made in conjunction with, and in the best interests of, the communities it serves. As part of this commitment, the Council regularly reviews its governance arrangements alongside learning best practice with other authorities to ensure the Council continues to meet its statutory obligations in the most effective way.
2. The Council owns four local authority trading companies covering housing services (Wokingham Housing Ltd (WHL), Loddon Homes Limited (LHL) and Berry Brook Homes Ltd (BHL)) and adult social care services (Optalis Ltd – jointly owned with Royal Borough of Windsor & Maidenhead). A holding company (Wokingham Holdings Ltd) is in place to provide oversight of the trading companies.

3. Oversight of companies has, historically, been exercised through councillors being appointed as non-executive directors to the companies with regular public reports being presented to Executive and statements to full Council.
4. In 2023, Wokingham Holdings Ltd commissioned an independent review (“the Altair review”) of its local housing companies to assess overall governance arrangements and reinforce best practice to deliver statutory arrangements. The review recommended that, “the Council reconsiders board composition and the role of and location of councillors in providing oversight of the companies. The Council may also consider the terms of reference, membership and role of a strengthened shareholder committee.”
5. The latest best practice guidance on local authority trading companies also indicates that the most effective form of governance and control is through the establishment of a Shareholder Committee.
6. It is believed that the recommendations proposed will improve the governance arrangements of the Council’s housing companies and allow the Council to closely monitor its interest with further clarity, transparency, and reporting.
7. The proposed Shareholder Committee will be a sub-committee of the Executive and therefore an Executive decision is needed.

## **BACKGROUND**

### **1 Current Governance Arrangements**

- 1.1 The Council has several companies which it either owns or has an interest in, which were formed to deliver council objectives in a more efficient and effective manner.
- 1.2 The Council owns four local authority trading companies covering housing services (Wokingham Housing Ltd (WHL), Loddon Homes Limited (LHL) and Berry Brook Homes Ltd (BHL)) and adult social care services (Optalis Ltd – jointly owned with Royal Borough of Windsor & Maidenhead). A holding company (Wokingham Holdings Ltd) is also in place to provide oversight of the trading companies.
- 1.3 All Wokingham companies currently have their own company boards in place to manage the activities and performance of each subsidiary. The boards comprise company directors made up of Councillors, Officers, and independent persons.
- 1.4 The Council wants to ensure that good governance and accountability is in place with respect to its Council owned housing companies and it is keen to learn from other local authorities' experiences. Recent public interest reports from external auditors highlight where, governance arrangements were not strong enough and the recommendations in this report are aimed at covering these areas of risk.
- 1.5 Oversight of companies has, historically, been exercised through councillors being appointed as non-executive directors to the companies with regular public reports being presented to Executive and statements to full Council.
- 1.6 In addition, Wokingham (Holdings) Limited has been established to ensure the operation of the Council's companies is conducted in an efficient manner, and coordinated as a group.

### **2 Proposals**

- 2.1 In 2023, Wokingham Holdings Ltd commissioned an independent review (“the Altair review”) of its local housing companies to assess overall governance arrangements and reinforce best practice to deliver statutory arrangements. The review recommended that, “the Council reconsiders board composition and the role of and location of councillors in providing oversight of the companies. The Council may also consider the terms of reference, membership and role of a strengthened shareholder committee.”
- 2.2 Apart from Optalis Limited, the Council is the sole shareholder in its subsidiaries and should be kept informed of each of its subsidiary's operations and performance. To support the Council in carrying out its role as a shareholder it is proposed that a Shareholder Committee should be established to perform the shareholder function on behalf of the Council across its housing companies.
- 2.3 The general legal concept is that shareholders own the company (such as the Council in respect of Council owned companies), whilst directors run companies. The directors of companies are empowered to run the relevant company so long

as they do so in accordance with its company constitution and in line with their directors' duties. (Some activities, such as amending the constitution of a company, will always require the input of shareholders, by virtue of the Companies Act). If the shareholders do not like how the company is being run by the directors, then it is open to them to remove the directors and replace them with others; directors are required to act independently of the shareholders and utilise their independent judgement to take decisions as to how the company is run.

### **3 Shareholder Committee**

- 3.1 The shareholder committee will perform the shareholder's function and lender scrutiny on behalf of the Council for its housing companies. This committee will consist of 5 Councillors made up of elected Executive members, 1 non-voting opposition member, with Council officer advisors as required.
- 3.2 Executive is being asked to delegate specific powers to the Shareholder Committee by way of a terms of reference (Appendix 1) to be included within the constitution. It is currently envisaged that the Shareholder Committee will be convened at least three times a year to provide direction and scrutiny of the housing companies' business plan, annual reports and performance. The committee will also refer any significant issues of concern for Executive consideration and determination as required.
- 3.3 It is recommended that reports from the housing companies are considered by the Shareholder Committee at general intervals such as a mid- year report and at the end of financial year full report of all the Council owned companies. Executive will retain responsibility for the following functions in relation to the Council's companies:
  - The establishment of any new company or entity
  - The decommissioning/winding up of existing companies or entity
  - Scheme of delegations to the Shareholder Committee
  - Subject to approval of this report, the determination of for the provision of investment of funds or assets or any lending facilities from the Council to the Council's companies will be determined by Executive Member for Finance and Governance.
- 3.4 Shareholder Committee Membership to be set with four Executive Members comprising of the Leader (as Chair), Deputy Leader, Executive Member for Business & Economic Development, and Executive Member for Finance. In addition, a non-voting member of the opposition will be invited to join the Committee. This will be kept under review and can be amended as appropriate.

### **4 Memorandum of Agreement**

- 4.1 In addition to the establishment of a shareholder committee, it is recommended as good practice that a Memorandum of Agreement is drafted and will apply to all Wokingham companies. The agreement should contain core terms which could be applied to all the Council's companies and how the Shareholder Committee will interact with the housing companies but may well need to contain additional

bespoke or modified terms for each company depending on what the company is doing (i.e. what business it is in / markets it trades in etc.) and its size etc.

- 4.2 The Memorandum of Agreement will contain a list of "reserved matters" which the company agree will not go ahead without the consent of all the shareholders; these reserved matters will be dealt with by the Shareholder Committee or Executive, where Executive has retained responsibility for specific matters, as set out in paragraph 3.3 above). This agreement involves the company agreeing to limit their authority to take decisions without input from the company's owners.
- 4.3 It is expected that each housing company will enter into a form of agreement with the Council (whether as owner, controller or lender) setting out the basis of the relationship between them.
- 4.4 Delegated authority is sought in this report to agree the final terms of Memorandum of Agreement (MOA). Some of the key terms of this are broadly summarised below:

a) **Business/Conduct of the Company:** provides that the Business of the company (including its objectives) will be as set out in the Business Plans as approved by the Council and that the company will carry out its business in accordance with the MOA, the Business Plans and other parameters agreed with the Council

b) **The Board:** will set out broadly how the Board will operate on a day-to-day basis. The Council (as Shareholder) will have the power to appoint and remove members of the Board in all of its companies

c) **Policies:** various policies will be required in order for the operation of the company to be effective; for example where there are potential conflicts of interest a policy can be adopted to provide clarity; the shareholder will also include a requirement for adoption of a remuneration policy;

d) **Council Reserve Power:** as well as the specific matters which are always reserved to the Council to decide and which will be set out in a schedule to the MOA, the MOA gives a general power to the Council (as Shareholder Committee) to direct the Board to take action or refrain from taking any action

e) **Scheme of Delegation:** sets out how decisions will be made. This will be a separate schedule setting out which decisions will be reserved to the Council as Shareholder and which by the company's Board (and which by the company's management, if applicable)

f) **Business Plans:** requires the company to be run and financed in accordance with the Business Plan and sets out how they will be prepared, approved and updated. Each MOA will describe the Business Plan which are to be produced by the company, which will vary depending on the nature of the subsidiary. The MOU will also refer to how performance will be monitored against Business Plans with key trigger events which will require a review of the relevant Business Plan.

## FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

*The Council faces unprecedented financial pressures as a result of; the longer term impact of the COVID-19 crisis, Brexit, the war in Ukraine and the general economic climate of rising prices and the increasing cost of debt. It is therefore imperative that Council resources are optimised and are focused on the vulnerable and on its highest priorities.*

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0	Yes	Revenue
Next Financial Year (Year 2)	£0	Yes	Revenue
Following Financial Year (Year 3)	£0	Yes	Revenue

### Other Financial Information

The proposals set out in this report seek to strengthen and consolidate the financial monitoring undertaken in terms of the Council's housing companies. Key financial monitoring information will be brought together for the Shareholder Committee. This will provide a regular snapshot of the financial performance of each housing company and the group to support wider decision making. It will also help to raise early concerns about the financial position of any of the subsidiary housing company and where necessary discuss and agree appropriate actions.

### Legal Implications arising from the Recommendation(s)

The proposal to set up a Shareholder Committee, the Terms of Reference as set out, and the ancillary arrangements outlined in this report will ensure that the Council not only acts lawfully but also that current guidance and good practice recommendations are followed. The proposals will ensure improved governance of housing companies or bodies set up by the Council.

The Executive can delegate its functions to a Committee via paragraph 5.4.1.1(a) and to Executive Members and Officers via sub-paragraphs (c) and (d) respectively.

Paragraph 5.2.6.17 will have to be deleted / amended to reflect the change in relationship of the Leader to the Companies, and the Constitution amended to reflect the creation of the Committee and its functions and responsibilities, most likely by an addition to 5.7

### Stakeholder Considerations and Consultation

No public consultation is required for this decision.

### Public Sector Equality Duty

An equalities assessment is not required for this decision.

**Climate Emergency – *This Council has declared a climate emergency and is committed to playing as full a role as possible – leading by example as well as by exhortation – in achieving a carbon neutral Wokingham Borough by 2030***

There are no specific implications of this decision relating to the Borough achieving carbon neutrality.

**Reasons for considering the report in Closed Session**

Not applicable.

**List of Background Papers**

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