

VAHT BOARD MEMBERSHIP
Cllr. Mrs. Angela Macpherson
Cabinet Member for Leisure, Community
Matters and Civic Amenities

1 Purpose

- 1.1 To consider a request from the Vale of Aylesbury Housing Trust (VAHT) for the Council to give consent under the Housing Stock Transfer Agreement to the removal of the requirement for the Council to appoint 3 Council Board Members. This is to allow VAHT to fully comply with the requirements of the National Housing Federation's Code of Governance.

2 Recommendations/for decision

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| <p>2.1 That the Cabinet agrees:</p> <p>2.2 To the removal of the requirement for the Council to appoint 3 Council Board members to VAHT's board and instead nominate 3 representatives thus enabling the VAHT Board to make appointments in accordance with the advice of the National Housing Federation's Code of Governance.</p> |
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3 Background Information

- 3.1 AVDC's representation on VAHT's Board has been discussed several times over the past few years. At a Cabinet meeting on 17th January 2012 Members were presented with a report which contained a request to give consent under the Housing Stock Transfer Agreement to a reduction in the Council's membership of VAHT's Board from 5 Councillors to 3 and a reduction in the tenants' representation from 5 to 4 members. This request from VAHT was in order to comply with the National Housing Federation's Code of Governance which recommends that housing associations have a maximum of 12 Board members. Following a full debate it was resolved that:
- (1) That the request from VAHT to reduce the size of its Board from 15 to 12 be supported
 - (2) That the Director, after consultation with the Cabinet Member for Community Matters, be authorised to enter into discussions with VAHT to identify how the reduction in Board membership might be achieved
 - (3) That a further report be brought back to Cabinet when the discussions referred to above have been concluded.
- 3.2 Following these discussions as requested a further report was presented to Cabinet at a meeting held on 10th December 2014, recommending that the Cabinet agreed to the proposed Council board member reductions and the deletion of the leaseholder position on VAHT's Board. These recommendations were agreed at that meeting.

4 Supporting information

- 4.1 Following the Cabinet meeting in December 2014 as agreed we reduced our VAHT Board appointees from 5 to 3.
- 4.2 The Cabinet Member for Leisure, Community Matters and Civic Amenities and the Director have continued to meet with VAHT's Chairman and CEO regarding this issue. The recommendations within this report reflect the outcome of their discussions.

4.3 When changes to the Board membership have been previously discussed a question was raised regarding how any reduction in the number of AVDC Board positions will affect the Council's representation. It is hoped that the following sections of the report clarify the matters in this regard.

4.4 There are two main strands to the issue of Members voting rights:

Company membership rights are related to the general strategic direction of the Trust. AVDC has a 'Golden Share' (as defined at article 17(3) of the Articles of Association (Article attached in Appendix 2 with tracked changes highlighting proposed changes)) in its capacity as a member of the Trust. Golden Share is a term used by VAHT's solicitors to refer to weighted voting which may apply when a general meeting of the Trust is called. The Golden Share is only invoked when a member attending the said general meeting requests a poll. A poll can be called by the chairman, two members acting together or a Council member. When a poll is called, the vote awarded to each member (Council, Independent and Tenant member) is 33%, therefore giving each member the same power.

The Golden Share held by AVDC only applies at member meetings **not** board meetings and in the current proposed changes this arrangement will be maintained. Once the Golden Share is invoked, the Council Member, or any other member acting alone can block a special resolution. A special resolution is required to change the articles.

It is not proposed to alter the Golden Share. However, if a change is proposed to this arrangement not only would this require AVDC members' agreement, but additional protection is also provided in the Stock Transfer Agreement at schedule 7, part 2 (page 110). The company (VAHT) agrees that the actual percentage ratios of membership of the Board of Management will not be amended without the Council's consent (). This would therefore be additional control over and above the Golden Share provision.

Board Membership voting rights are related to the everyday operational running of the Trust (which is where the impact of this proposed change takes effect). Most decisions at Board meetings are passed on a show of hands and the Golden Share, or any other type of weighted voting, does not apply. The Chairman does have the casting vote (Article 44 of the Articles of Association), so essentially two votes. The exception to the simple majority used to pass decision is article 34(6) which requires at least three quarters of the remaining vote members to pass a resolution to remove a board member. This is referring to the removal of a particular person, not the general post.

4.5 It should also be highlighted here that any Council Member appointed to VAHT's Board must act in the interest of the company rather than in their capacity as an AVDC elected Member.

4.6 As a Registered Provider, VAHT is bound to comply with the standards set by the regulation committee of the Homes and Communities Agency. One of the expectations of this regulator is that a RP adopts an appropriate Code of Governance and complies with the terms of the adopted code. VAHT, like most RPs, has adopted the National Housing Federation's (NHF) Code of Governance 2015.

4.7 The NHF Code recommends:

- It must be up to each organisation to decide on the board composition that is best for it;
- Boards should have at least 5 members and no more than 12; and

- Boards must ensure on a continuing basis that those selected or to be elected to board membership bring the skills and expertise that are relevant to its needs.
- 4.8 Discussions have taken place with VAHT, whom it is understood will make a formal request that AVDC removes the requirement for the ‘appointment’ of 3 Council Board Members, in order to allow it to fully select its board Members and not be constrained by its Articles as they are currently drafted. In effect AVDC would still be able to nominate 3 members to the Board but it would be for the Board to formally confirm the appointments.
- 4.9 The formal request will be reported orally at the meeting together with the suggested change to the Articles of Association to facilitate 4.8 above.
- 4.10 There are precedents where local authorities that have sponsored large scale voluntary transfers (LSVTs) have reduced their level of influence at Board level as the organisation matures. Two local examples of these are Chiltern and South Bucks councils. Neither Chiltern nor South Bucks district councils have any board representation at the relevant RPs.

5 Options considered

- 5.1 Not agreeing to this amendment is an option, but is not considered to be in the best interests of either VAHT or the Council, as it could affect the Trust’s ability to comply with the relevant code of governance for registered providers.

6 Reasons for Recommendation

- 6.1 It is now approaching 10 years since the Large Scale Voluntary Transfer took place and VAHT have performed well against the Offer Promises. The only outstanding promise is the completion of Walton Court’s redevelopment, although this is in its final stages.
- 6.2 The proposed level of AVDC’s membership of VAHT’s Board will enable the Trust to respond positively to the advice and guidance they have received from the Homes and Communities Agency and the NHF as explained in 4.7.
- 6.3 Officers have recently re-investigated the guidance provided by relevant bodies, such as the NHF and included below are some extracts taken from the NHF Code of governance – Promoting board excellence for housing associations (2015 edition) supporting VAHT in their request:
- **B4** – Board members who are executive staff must be in a minority. Boards should have at least five members and no more than twelve, including any co-optees and any executive board members.
 - **D Main requirement** – Recruitment to board vacancies must be open and transparent and based on the board’s considered view of the skills and attributes required to discharge its functions. The board must select or appoint new members objectively on merit and must undertake regular appraisals of its members and of the board as a whole.
 - **D7** – Where the organisation’s constitution provides for one or more board members to be nominated or directly elected, the organisation must ensure that those coming forward bring skills and experience that meet the needs of the board, and that they are fully aware in advance of the responsibilities that they will undertake. New board members must not be appointed without undergoing a due selection and assessment process to establish their suitability.

7 Resource implications

7.1 None

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Background Documents Homes and Communities Agency – Governance and Financial Viability Standard

National Housing Federation – Code of governance – Promoting board excellence for housing associations (2015 edition)