

Appendices:1



## CABINET REPORT

<b>Report Title</b>	<b>Northampton Partnership Homes</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	12 November 2014
<b>Key Decision:</b>	YES
<b>Within Policy:</b>	YES
<b>Policy Document:</b>	YES
<b>Directorate:</b>	Housing Directorate
<b>Accountable Cabinet Member:</b>	Councillor Mary Markham
<b>Ward(s)</b>	All Wards

### 1. Purpose

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- 1.1 The purpose of this report is for Cabinet to agree various aspects of the implementation of the Council's decision to set up an ALMO and agree the governance arrangements that will exist between the Council and Northampton Partnership Homes (NPH).

### 2. Recommendations

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That Cabinet:

- 2.1 Approves the Management Agreement and associated schedules, attached as appendix 1 and delegates authority to the Chief Executive, in consultation with the Leader and Cabinet Member for Housing, to make such amendments as necessary and appropriate to finalise and complete the Agreement.
- 2.2 Authorises the Chief Executive to submit an application for approval for the arrangement with NPH for the management of Council homes under section 27 of the Housing Act 1985.
- 2.3 Delegates to the Chief Finance Officer (Section 151 Officer) in consultation with the Leader and Cabinet Member for Housing, to agree and amend the indicative

Total Fee following further work before the ALMO go live date on January 5<sup>th</sup> 2015.

- 2.4 Delegates to the Chief Executive in consultation with the Leader and Cabinet member for Housing the authority to finalise the Delivery Plan and Service Level Agreements (SLA's), which are annexed to the Management Agreement.
- 2.5 Thanks all those involved, at NBC and NPH for the constructive way in which negotiations leading up to the setting up of the ALMO and agreeing the Management Agreement have been conducted.

### **3. Issues and Choices**

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#### **Report Background**

- 3.1.1 In 2012, the Council commenced a comprehensive review of potential options for the future ownership, funding and management of its Housing Stock, to examine which option would best deliver long term improvements needed to both homes and estates as well as improve the quality of services provided to its tenants.
- 3.1.2 On 9<sup>th</sup> December 2013, after considering the findings of the review, the Council agreed to set up an Arms Length Management Organisation (ALMO) with the intention that it would be operational from 5<sup>th</sup> January 2015 and would be initially set up for a period of 15 years.
- 3.1.3 Cabinet agreed that the implementation phase should continue to include a comprehensive programme of consultation and engagement with key stakeholders to ensure that they were well informed and remained at the heart of the process.
- 3.1.4 On 9<sup>th</sup> April 2014, following consideration of feedback from consultation with key stakeholders, Cabinet agreed that the delivery vehicle for the legal incorporation of the ALMO would be a Company Limited by Guarantee. The ALMO was registered in the name of Northampton Partnership Homes, with the Council's Chief Executive and Monitoring Officer registered as holding directors. A Shadow Board structure was agreed and implemented in June 2014 to enable a smooth transition for the management of the service.
- 3.1.5 The ALMO Shadow Board structure was set up with the following membership;
  - 5 Tenants
  - 5 Council Nominees
  - 4 Independents
  - 2 Employees

The Shadow Board appointed a Chair and Vice Chair and has created six sub committees to support the business of the Shadow Board (See later in this report an update on the composition of the ALMO Board).

- 3.1.6 The Council is responsible for setting up the ALMO and as such has ensured that extensive support has been given to Board members to enable them to understand and ultimately discharge their roles. Expert independent external advisors have undertaken this work, providing support on various aspects including work on developing capacity for board members in key areas such as Director responsibilities and Governance.
- 3.1.7 The NPH Board was formally constituted on 29<sup>th</sup> October 2014 with all members of the Shadow Board now appointed as Directors of NPH. The Chief Executive and Monitoring Officer have now resigned as holding Directors of NPH. The Council, as body corporate, is the sole member of the ALMO Company.

## **3.2 Issues**

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### **Formal creation of the ALMO**

- 3.2.1 Prior consent is required under Section 27 of the Housing Act 1985, to enable the Council to implement the ALMO option. The regulator responsible for approving this is the Homes and Communities Agency (HCA) and certain key documents will to be provided as part of this application, including the main terms of the Management Agreement and other details, such as the plans specifying what land and property will be managed by NPH.

### **The Management Agreement**

- 3.2.2 The Management Agreement is the legally binding document which sets out the relationship between the Council and Northampton Partnership Homes. The Council and the Shadow Board have received separate and independent specialist legal advice throughout the negotiations of the Management Agreement and Delivery Plan.
- 3.2.3 The Management Agreement (Appendix 1) details the specific terms of the agreement. It is supported by a series of schedules which are appended to the agreement:
- Schedule 1- Describes the services that NPH will deliver on behalf of the Council (i.e. the scope of services)
  - Schedule 2- Details which services are to be delegated to NPH, the Council or whether there will be shared responsibility for delivery
  - Schedule 3- Details the Services to be provided to NPH by the Council under specific Service Level Agreements
  - Schedule 4- Specifies the payment method from the Council to NPH for Repairs, Maintenance and Improvement to properties
  - Schedule 5- Describes the total fee payable to NPH, broken down into the categories of Management Fee (General Fund-GF and Housing Revenue Account- HRA), Maintenance Expenditure and Capital Expenditure

Schedule 6- Details the principles upon which the fees will be annually agreed

Schedule 7- Lists all employee posts transferring to NPH under TUPE regulations

Annex 1 Details the key contracts applicable to NPH, specifying whether they are to be assigned or novated to NPH or retained by the Council

Annex 2 Contains the Delivery Plan which details what NPH will deliver from 2015-2020

3.2.4 Although the Management Agreement is for a period of fifteen years, the Delivery Plan period is a rolling five year plan. The advanced draft of the first five year Delivery Plan is attached to this report at Appendix 1 (Annex 2).

The following are key aspects of the Management Agreement.

### **The Delivery Plan and Specification**

3.2.5 The Specification, i.e. the scope of services to be delivered by NPH have been set out in Schedule 1 of the agreement. The Council can add to the list of services and will agree with NPH the nature of the service(s) to be provided and the fee required to deliver it, where necessary.

3.2.6 The Delivery Plan is a key document that sets out, in more detail than the Specification the services to be provided by NPH. The Delivery Plan is a 5 year rolling plan. However the Council will be conducting structured annual reviews of the delivery plan with NPH so as to ensure that Council priorities can be addressed. This will enable the Council's annual budget process to feed into and inform aspects of the Delivery Plan. The Delivery Plan appendices specify the objectives, performance measures, the Housing Asset Management Strategy and the fee proposal for years 1 to 5. The Delivery Plan was considered by NPH on 5<sup>th</sup> November and work to agree measures, targets and final detail is ongoing and will be finalised in time for the completion of the Management Agreement.

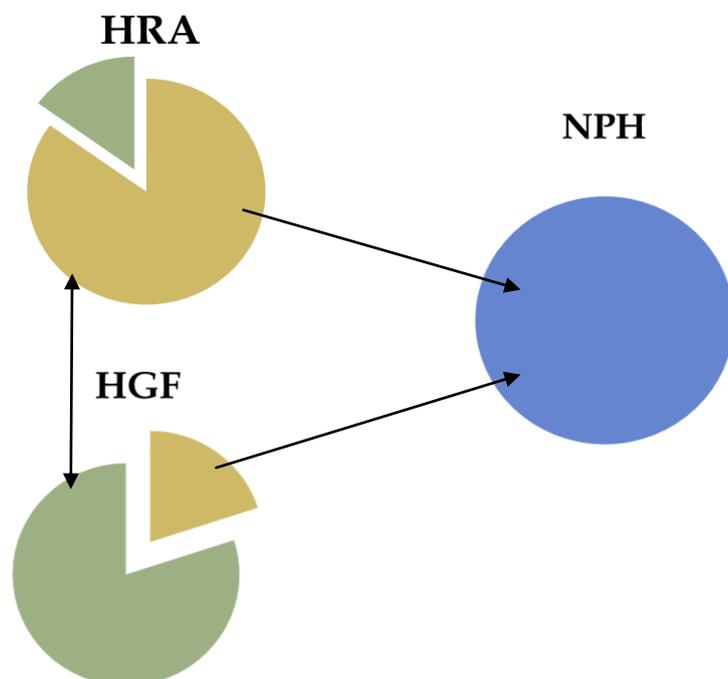
3.2.7 Whilst the Council will have the right to require a change to the Delivery Plan at the annual review, to ensure that NPH are able to forward plan effectively the Council has agreed that significant changes to the delivery plan will only be made with approval from the Council Leader and Council Chief Executive. In relation to changes to the Delivery Plan, which may result in additional expenditure for NPH, the Council will adjust the total fee payable to NPH to take account of the costs of making changes and the funding of the revised services when those changes take effect.

3.2.8 The Delivery Plan appendices specify the objectives, performance measures, the Housing Asset Management Strategy and the fee proposal for years 1 to 5.

## Key Management Agreement Principles

### Housing Revenue Account.

- 3.2.9 The Council has statutory responsibility for the HRA and will therefore retain management of the HRA. NPH, as part of their responsibilities, will provide the Council with information on its activities and advice on how best to make use of the resources within the HRA.
- 3.2.10 The HRA income and expenditure will be subject to the statutory provisions governing the HRA and both parties acknowledge this.
- 3.2.11 Although the HRA will continue to be the Council's statutory account for the housing landlord service, it will operate in a fundamentally different way to how it does currently. The Council will pay NPH a Total Fee robustly calculated to provide both the Housing Landlord services and those Housing General Fund Services NPH will provide.
- 3.2.12 NPH will receive what is defined in the Management Agreement as the "Total Fee" which will comprise of the majority of HRA budgets including the Capital Programme; Repairs and Maintenance and Operations Budgets. The Capital Programme (Improvement Programme) and the Repairs and Maintenance budgets will be managed budgets, whilst the Operations budget will be a devolved budget. NPH will receive some Housing General Fund budgets in relation to relevant service attributable to these. This is depicted simply in the diagram below:



The Management Services Fee will cover the HRA and General Fund Service elements. NPH will then operate using the management fee and manage the capital programme budget and revenue repairs and maintenance budget in accordance with what has been agreed by the Council.

3.2.13 The Total Fee calculation and principles form part of the Management Agreement detailed in schedule 5 and 6 respectively. Indicative figures at the time of this report are shown in the table below:

	<b>GF</b>	<b>HRA</b>	<b>TOTAL</b>
<b>Elements of Total Fee</b>	<b>£k</b>	<b>£k</b>	<b>£k</b>
Management Fee	912	16,467	<b>17,379</b>
Repairs and Maintenance Fee	-	14,454	<b>14,454</b>
Capital Sum	-	27,257	<b>27,257</b>
<b>TOTAL FEE</b>	912	58,178	<b>59,090</b>

3.2.14 The Total Fee will match the cost of the first year's element of the 5 year rolling Delivery Plan with indicative forecasts for the ensuing 4 years.

3.2.15 The Fee principles also set out NPH's obligation to identify and deliver efficiencies and achieve continuous improvement in services, achieving more for less and being benchmarked against comparable ALMOs facing similar challenges.

3.2.16 The Management Agreement will provide NPH the ability to action the virement of funds within the Total Fee up to an aggregate of £2 million per annum. Any requirement for a virement above this or of the Housing General Fund element will need NBC approval through the Chief Financial Officer (Statutory section 151 Officer). The Council's Chief Financial Officer, through the due diligence process, has identified issues in relation to the operation of this and Cabinet's attention is drawn to paragraph 4.2.4 of the Resources and Risks section of this report below.

### **Surpluses and Reserves**

3.2.17 Any accounting surpluses and reserves generated by NPH which arise from operations can be used by NPH in accordance with the Delivery Plan and in relation to activity outside the Delivery Plan in consultation with the Council. Surpluses/Reserves arising from the non-staffing elements of the Capital Programme or the Repairs or Maintenance Programme will be rolled over into the next financial year. Any available surpluses/reserves will need to be used to meet in year shortfalls in the Fee, excluding Pension deficits up to the date of the agreement.

### **SLA's**

3.2.18 The Council will provide services to NPH through various SLA's. Given the strategic importance of at least some of the services, the Management Agreement will not allow NPH to terminate these services unilaterally and any termination of SLA services will need to be by agreement with the Council. Negotiations on how SLA's and the associated costs will work, is still ongoing and will be finalised for the completion of the Management Agreement.

## **Contracts**

3.2.19 NPH will, as part of its operations, need the benefit of a number of contracts, which are currently with the Council. Contracts will be assigned, novated or retained by the Council, in the latter case (retained contracts) NPH will receive the services through the Council.

## **Council's Financial Support of NPH**

3.2.20 The Pensions liabilities of the transfer of NPH and how this is to be dealt with is still in the process of being considered by the Council in conjunction with the Pension's service. There is a concern from NPH's side that an attribution of a pension's deficit to their operation may, in formal accounting terms, cause them difficulties. Consequently, the Council has agreed to provide financial support to NPH such to enable them to continue as a going concern. However, in order to mitigate some of the risks to the Council arising from this Clause NPH will have a legal obligation under Clause 2.5 to "ensure that it conducts its business in a prudent and commercial manner".

## **New Homes**

3.2.21 The Council will work with and support NPH and other organisations to maximise opportunities for building and acquiring new homes within the borough and NPH will be the manager of any Council-owned new build properties.

## **Termination and Dispute Resolution**

3.2.22 The Management Agreement does, as is normal practice and prudent, have a dispute resolution procedure to deal with issues that arise under the agreement. The procedure goes through various stages, culminating in the ability to refer an issue to an Expert. The Council does, however, have the final say.

3.2.23 The Agreement does also have a termination clause which the Council can utilise if NPH fails to comply with the agreement or there is a serious and substantiated risk that it will fail to so comply.

## **3.3 Options**

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3.3.1 The Council has the option to consider whether or not to approve the Management Agreement and associated documents and proceed with the Section 27 application to create the regulation. The clear recommendation of this report is to proceed with the approval of the Management Agreement (in principle) and to proceed with the Section 27 application.

3.3.2 The comprehensive Options Review process completed in December 2013 thoroughly assessed the available options against a robust set of assessment criteria and made the recommendation to proceed with the creation of the ALMO.

## **4. Implications (including financial implications)**

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### **Policy**

- 4.1.1 The implementation of an ALMO to manage the Council's housing services in relation to the provision of council housing has implications for all policies relating to the provision of a range of services to the public. The Council will, in consultation with NPH, need to review a range of policies and strategies as necessary.

### **4.2 Resources and Risk**

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- 4.2.1 The corporate impact of setting up an ALMO is mitigated by the Housing Revenue Account remaining open. The fees for providing those services transferred, as previously described will be transferred as well and the costs charged to the HRA. Where HRA services or associated overheads are retained by the corporate body, those costs will also be charged on to the HRA.
- 4.2.2 Any significant change in the delivery methodology of the Council's services has been subject to careful and detailed management to avoid or minimise adverse implications for the Council's General Fund.
- 4.2.3 The vast majority of the work to determine the financial baseline has been carried out in partnership with NPH, also ensuring that the residual services remaining both in the HRA and in Housing General Fund are not impacted upon adversely. Further work on this area remains and will be finalised in conjunction with the HRA Business Plan and Delivery Plan ahead of 5<sup>th</sup> January 2015.
- 4.2.4 The Council's Chief Finance Officer (CFO) will be undertaking further due diligence on the Management Agreement and its impact on both the Council's and NPH's financial arrangements, procedures and processes. This will be part of the CFO discharging their statutory/fiduciary duties to the both the council tax and rent payer in the Borough. This further due diligence will include reviewing the arrangements for the Capital Improvement and Repairs & Maintenance budgets managed by NPH on behalf of the Council and virements. It should be noted there may be some minor amendments required to the Management Agreement as a result of this due diligence and review.
- 4.2.5 Subject to due process, it is intended that TUPE transfer will apply to any employees involved in delivering services transferred into NPH. The budget related to such employees has been taken into account when agreeing the management fee to be paid to NPH by the Council.
- 4.2.6 Regular monitoring arrangements will be implemented to review performance, including financial matters. External Auditors have been appointed by NPH supported by the Council's Section 151 Officer and Internal Auditor appointment is underway, to be concluded in early November 2014.
- 4.2.7 The Section 151 Officer of the Council will continue to have statutory duties and nothing in the agreement will be construed as preventing that officer from doing such acts or things as are properly required for the discharging of those duties.

## 4.3 Legal

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4.3.1 There are various legal implications relating to this project. The Options Review was undertaken to ensure that it fully complied with Government Guidance and legislation relating to Options Appraisals, and particularly those relating to requirements to consult with tenants on major changes proposed in the delivery of Housing services. The key documents relating to the requirements to consult and carry out Options Appraisals are:

- The Housing Act 1985, (Section 105)
- ODPM Guidance 2003- Delivering Decent Homes Option Appraisal Guidance for Local Authorities
- HCA Regulatory Framework for Social Housing 2012.

4.3.2 The Council needs specific approval for the management agreement from the Regulator, in this case the Homes and Communities Agency, under section 27 of the Housing Act 1985.

4.3.3 The Management Agreement outlines the legal responsibilities and obligations between the Council and NPH, the detail of which is contained within the body of the report.

4.3.4 NPH is a wholly owned Council Company limited by guarantee, with NBC as the sole corporate member of the Company and as such has particular legal rights in relation to the company.

## 4.4 Equality and Health

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4.4.1 A comprehensive Community Impact Assessment was carried out on the recommended option and for the approach taken by the Options Review process. The implementation phase has continued to adhere to the inclusive approach adopted for the Options Review process and to ensure that no adverse impacts to disadvantaged groups have been identified. A copy of the community impact assessment can be found at <http://www.northampton.gov.uk/downloads/file/6784/cabinet-appendix-3---community-impact-assessment>

## 4.5 Consultees (Internal and External)

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4.5.1 The Tenants' Panel, Employee Focus Group, wider employee groups and the ALMO Shadow Board, constituted following the Cabinet decision made on 9<sup>th</sup> April, have all been comprehensively consulted and engaged throughout the implementation process. This consultative approach followed the recommendations made by Council, as part of the Options Review decision on 9<sup>th</sup> December 2013. In relation to the Management Agreement Comprehensive, negotiations have taken place between NBC lawyers and NPH lawyers.

## 4.6 How the Proposals deliver Priority Outcomes

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4.6.1 The Creation of the ALMO will help deliver against the following Corporate Plan priorities and outcomes;

- **Priority 2- Invest in Safer Cleaner Neighbourhoods:** The Options Review process identified additional funding to improve day to day service delivery for housing services, which also included the implementation of a new local investment standard, the Northampton Standard. This standard includes plans for significant investment in improvements to estates and neighbourhoods, including additional security measures.
- **Priority 4- Making every £ go further:** An asset analysis has been carried out identifying properties where investment requirements exceed rental income. This information has been used to create a new Housing Asset Management Strategy which will ensure that value for money considerations will be at the forefront of future investment decisions.
- **Priority 5- Better Homes for the Future:** The focus and mission statement for the Review was to improve homes, neighbourhoods and services for council tenants. The development of the new Northampton Standard includes new standards for improvements to homes and improved service standards.
- **Priority 6- Creating Empowered Communities:** One of the key reasons why the recommended option to create an ALMO was reached, was due to its ability to provide increased opportunities for involvement and decision making for both tenants and employees. The newly created Shadow Board for the ALMO has two employee and five tenant board members.
- **Priority 8- Responding to your needs:** The Options Review and implementation process involved collecting and assessing evidence from a number of sources, including a Tenant Survey which was a key piece of evidence, as it identified tenants' priorities for improvements. This information directly influenced the development of the new Northampton Standard, ensuring that issues relating to the quality of homes and estates were addressed. Tenant Conferences also provided essential feedback from tenants and leaseholders.

## 4.7 Other Implications

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None Specifically

## 5. Background Papers

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- 5.1 Council Report- HOUSING STOCK OPTIONS APPRAISAL FINAL REPORT – 9<sup>th</sup> December 2013
- 5.2 Cabinet Report- Legal set up of ALMO- 9<sup>th</sup> April 2014
- 5.3 Cabinet Report- Services to be Delivered by Northampton Partnership Homes - 9<sup>th</sup> July 2014
- 5.4 Cabinet Report -Housing Asset Management Strategy- 12 November 2014
- 5.5 Housing Stock Options Appraisal Community Impact Assessment - December 2013

**Dale Robertson Programme Director- ALMO Implementation ext 7110**