

**South Lakeland District Council  
Cabinet**

**Wednesday, 1 September 2021**

**South Lakes Housing**

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**Portfolio:** Housing Portfolio Holder  
**Report from:** Director of Strategy, Innovation and Resources  
**Report Author:** David Sykes – Director of Strategy, Innovation and Resources  
**Wards:**  
**Forward Plan:** Not applicable

**Links to Council Plan Priorities:**

South Lakes Housing (SLH) are seeking the Council's approval of a change to their constitution which should result in strengthening of their Board, with all appointments becoming skills and experience based. SLH seek the change to build further strength and resilience within the organisation, improving their provision and management of affordable housing in the District.

Working across boundaries – N/A

Delivering a balanced community – South Lakes Housing is a registered provider of affordable housing.

A fairer South Lakeland – As above

Addressing the climate emergency – N/A

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**1.0 Expected Outcome and Measures of Success.**

1.1 The proposal seeks to strengthen South Lakes Housing's Board. It seeks to remove the Council's nomination to 2 Director positions, enabling the organisation to adopt a skills based approach to the whole of its Board appointments. South Lakes Housing propose further relationship measures which continue to build a strategic relationship between the Council and South Lakes Housing in the pursuit of the provision and management of affordable housing in the District.

**2.0 Recommendation**

**2.1 It is recommended that Cabinet:**

- (1) Approve the Council relinquishes its nomination rights to the Board of Directors;**
- (2) Note the removal of the Council's shareholder voting rights as a consequence of regulatory requirements;**
- (3) Approve that the Council informs SLH of its position so that SLH may put the proposed changes before their AGM planned for September 2021; and**

**(4) Endorse the approaches described in the report (paragraph 3.10) to ensure a continued strategic relationship between South Lakes Housing and the Council.**

**3.0 Background and Proposals**

- 3.1 South Lakes Housing is a Community Benefit Society, registered with the Financial Conduct Authority under the Co-operative and Community benefit Societies Act, 2014 (previously referred to as an Industrial and Provident Society), with charitable objectives. As an exempt charity it must carry out activities which are defined as for community benefit. It is regulated by the Financial Conduct Authority as well as the Social Housing regulator.
- 3.2 The Council's former housing stock transferred to SLH on the 5th March 2012. The defined relationship between the Council and South Lakes Housing is bound by the terms of the Transfer Agreement and SLH is required to consult with the Council on a range of issues, many of which require the Council's consent.
- 3.3 SLH has a Board of twelve Directors. On transfer, the Council was able to nominate up to four Directors. In June 2017 Cabinet approved a request from SLH to reduce the number of nominations from 4 to 2. A copy of the report to Cabinet is available through the link provided in the Background Documents section of this report.
- 3.4 Now four years later and in the 10<sup>th</sup> year post transfer, SLH have requested that the Council relinquishes its nomination rights to the Board. SLH delivered the promises to tenants agreed as part of the transfer and the relationship between the Council and SLH has matured, developing into a strong strategic partnership with shared ambition for the South Lakeland community.
- 3.5 SLH's position is that in order to continue to improve services to residents and help tackle the very substantial housing challenges faced by our communities, the composition of their Board needs to maximise access to the most appropriate skills and experience. This range of skills and experience will include, for example, finance, asset management and development, organisational development, knowledge of local community issues and experience which ensures the Customers' Voice is heard at a Governance level. Nominations based on the original transfer requirements are not always best aligned to what is needed now and in the future.
- 3.6 SLH has an annual assessment by the Regulator of Social Housing and has consistently demonstrated a meeting of the Regulatory Standards, achieving the highest possible rating for Governance and Viability. One standard is that *'Registered Providers...do not inappropriately advance the interests of third parties,'* to ensure the organisation acts independently with no control or undue influence by other parties. The Regulations governing the relationship between Councils and Housing Associations went further in para 5 of the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 which in effect removes the shareholding voting rights of a local authority in relation to a housing associations and South Lakes Housing's constitution will need to be amended to reflect this change. As this is a regulatory change, Cabinet are asked to note the change to the Council's shareholder voting rights.
- 3.7 SLH's drive to equip its Board with the skills and experience necessary to ensure its continued development, coupled with Regulatory Standards and a maturing of relationship over the 10 years since transfer lead to their current request that the Council relinquishes its nomination rights to the Board. This pattern of change to governance arrangements as the transfer matures is consistent with other stock transfers.

- 3.8 At the point of transfer, the Council sought means to best ensure the new organisation (SLH) would fulfil the promises the Council made to tenants on transfer and that the assets transferring would continue to be applied to the provision of affordable homes. The ability to nominate to the Board was seen as a means to continue to influence the development of the new organisation, bringing a level of assurance to the Council of the progress of the new organisation. As the organisation has matured this rationale has been fulfilled. Together with the Regulator's position on independence and the reality that as Directors, the Council's nominees have to act in the sole interests of SLH, the rationale for continuing Council nominations is diminished and an alternative focus on building and strengthening strategic partnership between the Council and South Lakes Housing may better further joint ambition. Change would enable SLH to pursue a 100% skills based Board, strengthening its capacity and ability to address the needs of its tenants and increasing the provision of affordable housing.
- 3.9 The Social Housing White Paper January 2021 The Charter for Social Housing Residents sets out key proposals that further back the need to broaden the skills mix and diversity of Board Members. It also will ensure that there is a strong and proactive consumer regulatory regime working with the Regulator of Social Housing to strengthen standards against which landlords are regulated. This gives further assurance that standards will continue to be maintained and tenants voices heard.
- 3.10 As part of their request, SLH are keen to foster continued good relations and partnership with the Council. The Transfer agreement will still provide obligations on SLH to assist the Council in strategic, operational, and emergency matters. SLH are committed to continue to work closely with the Council in a spirit of partnership and suggest this could be developed into a Charter or Memorandum of Cooperation. This could cover:
- Strategic alignment* – SLH and SLDC leadership meeting quarterly to ensure mutual understanding of strategic aims, delivery plans and opportunities for partnering/levering investment. Shared strategic ambitions for more affordable homes, combatting climate change and addressing fuel poverty are cornerstones to both organisations' plans and further opportunity exists to contribute to economic recovery, the skills agenda and regenerating physical infrastructure.
- Delivering Housing objectives* – SLH's commitment to South Lakeland is consistent with the priorities set out with the South Lakeland District Council Housing Strategy to develop new affordable and open market homes to meet need and support economic growth. SLH's financial commitment is expressed in their 30-year financial plan, together with commitment to leveraging additional investment and grant funding.
- Operational working* – Good operational links have mutual benefit and better outcomes for customers.
- Local Member Ward Interests* – SLH would commit to a Ward Members Protocol to assure a high standard of response to Ward members and transparency of performance and engagement.
- 3.11 The original rationale for the Council to have Council nominated Directors on the SLH Board has been fulfilled and the requirements of the Regulator have moved on, promoting independence and strong governance within a Regulatory framework. It is recommended that the proposals for change received from SLH are supported and that the Council and SLH focus on continued development of our strategic partnership to help address our common strategic ambitions. If agreed, the change would be enacted through a change in the Society's Rules together with the removal of shareholder voting rights (as per 2017 regulation) to be put before the SLH AGM planned for September 2021.

#### **4.0 Appendices Attached to this Report**

None

#### **5.0 Consultation**

5.1 SLH introduced their proposal through informal discussion with the (then) Deputy Leader and Housing Portfolio Holder and Director Strategy Innovation and Resources.

#### **6.0 Alternative Options**

6.1 Cabinet could refuse to relinquish the Council's nominations of Directors to SLH Board. This would be contrary to the intention of the housing Regulator to ensure Regulated Providers (SLH) act with full independence. It would also constrain SLH in their recruitment of a 100% skills based Board which may impact on their ability to manage and sustain an organisation capable of meeting its challenges and delivering its strategic ambition. This option is not recommended.

6.2 There are no alternative options to the change to shareholder voting rights.

6.3 The Cabinet could decide not to further develop the strategic relationship with SLH. This would forego benefits to the Council achieving its priorities as set out in the Council Plan. This option is not recommended.

#### **7.0 Implications**

##### **Financial, Resources and Procurement**

7.1 The Council's shareholding has a nominal value of £1. There are no financial implications.

##### **Human Resources**

7.2 There are no Human Resources implications. Though the recommendations of this report will lead to the ending of nomination rights, elected Members who have interest in housing and have the requisite skills sought by SLH would be able to apply to SLH for selection to Board vacancies.

##### **Legal**

#### **7.3 Transfer Agreement and Constitutional Implications.**

7.3.1 Schedule 5 of the Transfer Agreement sets out the covenants of both the Council (in Part 1) and SHL (in Part 2) in respect of Council nominees to the SLH Board and amendments to the constitution:

- paragraph 8 of Part 1 states that the Council shall "*use reasonable endeavours to nominate to the Society's board nominees who have suitable skills and experience...*";
- paragraph 4.2 of Part 2 of Schedule 5 noting that the Society (SLH) "*will accept the Council's appointment of its council board members (as defined in the Society's constitution) to its Board of Management and any removal or replacements*"....; and
- paragraph 4.1 of Part 2 requires that "*the Society will not change its Constitution so as to reduce the actual or percentage Council or Tenants shareholding or membership on its Board of Management without the Council's prior consent in writing...*"

7.3.2 The Transfer Agreement does not provide an absolute obligation on the Council to nominate board members and so if not nominated, SLH cannot accept council appointees. Approval of the recommendation to no longer appoint Council representatives to SHL Board will not breach the covenants.

- 7.3.3 Amendments to the Constitution to remove the Council Shareholder and associated voting rights (as defined in the constitution), and to remove Rule 8.2 (reserving places for Council appointees), must be consented to in writing by the Council in accordance with paragraph 4.1 (Part 2, Schedule 5). The consent must be provided by the Council to enable SLH to amend the constitution to remove the Council and once agreed and effective, there will be no more council board members defined in the constitution to be appointed under paragraph 4.2 of Part 2, Schedule 5.

### Health and Sustainability Impact Assessment

- 7.4 Have you completed a Health and Sustainability Impact Assessment? No
- 7.5 If you have not completed an Impact Assessment, please explain your reasons: The proposal relates to a proposed governance change only.

### Equality and Diversity

- 7.6 Have you completed an Equality Impact Analysis? No
- 7.7 If you have not completed an Impact Analysis, please explain your reasons: The proposal relates to a proposed governance change only. SLH procedures are subject to their equalities scheme.

Risk Management	Consequence	Controls required
The Council becomes less involved with the functioning and purpose of South Lakes Housing	Potential reduction in partnership working on meeting housing needs of the District	Continue to develop the partnership working through the measures described in Paragraph 3.9

### Contact Officers

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### Background Documents Available

Name of Background document	Where it is available
Previous report – Cabinet June 2017	<a href="https://democracy.southlakeland.gov.uk/documents/s18526/South%20Lakes%20Housing.pdf">https://democracy.southlakeland.gov.uk/documents/s18526/South%20Lakes%20Housing.pdf</a>
Minutes of the Cabinet – June 2017	Minute CEX 18 refers: <a href="https://democracy.southlakeland.gov.uk/ielistDocuments.aspx?CId=121&amp;MId=4053&amp;Ver=4">https://democracy.southlakeland.gov.uk/ielistDocuments.aspx?CId=121&amp;MId=4053&amp;Ver=4</a>

### Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	24/06/21	09/08/21
Monitoring Officer	24/06/21	19/08/2021
CMT	01/07/21	01/07/21

Circulated to	Date sent
Lead Specialist	N/A
Human Resources Lead Specialist	24/06/21
Communications Team	N/A
Leader	24/06/21

<b>Circulated to</b>	<b>Date sent</b>
Committee Chairman	N/A
Portfolio Holder	24/06/21
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A