

SUBJECT: Monmouthshire Housing Association – Requests to Extend the VAT Set Off Agreement and Support to Review Governance Structure
MEETING: County Council
DATE: 21st September 2017
DIVISION/WARDS AFFECTED: ALL

1. PURPOSE:

- 1.1 To consider two requests from Monmouthshire Housing Association (MHA) to extend the VAT Set-Off Agreement with the Council and to support a review of MHA's governance structure through allowing MHA to make necessary rule changes.

2. RECOMMENDATIONS:

- 2.1 To agree to:
- Enter into a deed of variation to extend the VAT Set-Off Agreement;
 - MHA making rule changes to remove the current 4 nominees arrangement; reducing Council nominees from 4 to 2; Council nominees to meet the skillset required by MHA and in the event that the Council can't nominate a suitable nominee. MHA will be able to fill any void positions for three years.

3. KEY ISSUES

Extension of VAT Set-Off Agreement (See Appendix 1)

- 3.1 Under stock transfer, MHA agreed to undertake to deliver a 10 year programme of planned improvements to the transferred stock, valued at £92,217,863. This sum was subject to a VAT Set-Off Agreement with the Council. This facilitated MHA to benefit from the Council's VAT shelter and exempted the work from VAT.
- 3.2 At the end of 2012, MHA's stock had achieved the Welsh Housing Quality Standard and were on course to deliver the works outlined in the transfer. During the course of the works it became apparent that it would not be practical nor of best value to carry out all of the works within the 10 year period. To do so would have required replacing elements (such as windows) before the end of their lifespan and carrying out works in an inefficient and disruptive manner.
- 3.3 MHA are, therefore, requesting a 5 year extension to the VAT Off-Set Agreement in order to complete the agreed original programme of works. The Stock Transfer Agreement allows MHA to defer completion of the said works, subject to informing the Council of the delay and consulting on implementing a revised programme.
- 3.4 The Council has sought advice on MHA's request. The Council has been advised that there are no issues if the schedule of works remains the same. There are no changes to the original programme of works. Nor additional costs to the Council.
- Proposed MHA Rule Changes**
- 3.4 MHA are currently reviewing their future direction. MHA will continue to invest in their stock, but also wish to increase their development of affordable housing whilst expanding their trading subsidiary, the surplus of which is gift aided to MHA and reinvested back into Monmouthshire. To support this MHA wish to change their Board structure to ensure they have the necessary requisite skills.

- 3.5 By way of further context (**See Appendix 2**) Welsh Government intend to legislate **against** the current public classification of registered social landlords. This is expected to include a power to reduce local authority influence over RSL's which is proposed to include a limit on reserved places for local authority nominees and removing any controlling voting. Welsh Government have preceded this with a revised Regulatory Framework and guidance (**See Appendix 2**) strengthening the focus on RSL's to demonstrate management boards have the requisite skill set to adequately run organisations, protect tenants and ensure financial viability.
- 3.6 At present the Board is made up of 4 independents, 4 tenants and 4 county councillors. MHA are, therefore, requesting the Council to assist MHA by:
- Agreeing to allow MHA to change its rules to remove the current 4 nominees;
 - Reducing the number of nominees from four to two and accepting that these don't necessarily need to be elected members;
 - Accepting that nominees would need a skillset as required by MHA and should the Council be unable to nominate a suitable nominee, MHA be able to fill any vacancy with a candidate with the required skills set of their own choice for three years and
 - Allowing MHA to change any rules necessary to implement the above and to amend any other rules that may be necessary as a result of the above.
- 3.7 Within the Stock Transfer Agreement, MHA has covenanted with the Council *not to change its Rules of Association so far as they relate to local authority or tenant representation without the Council's prior consent in writing, such consent not to be unreasonably withheld or delayed and in relation to all reasonable advice issued by the Associations regulator concerning the governance of all or classes of registered social landlords, the Council shall be required to give its consent promptly.* In this context, the Council's Legal Service has advised that given that the rule changes are consistent with Welsh Government policy direction and guidance, it will be difficult for the council to refuse to give its consent to the proposed changes
- 3.8 Officers have assessed the risks of MHA's request, which are considered to be low. **See Appendix 3.**
- 3.9 MHA has explicitly stated that it is **not** seeking to change its rule which says it will operate primarily within Monmouthshire. Indeed, with 236 people employed directly and another 40-60 employed at any one time through contractors, MHA wish to stress their commitment to Monmouthshire. If additional opportunities arise within the County, MHA have advised they will commit further resources. MHA have made the point that as their subsidiary grows, the proceeds from this are and will be recycled through the parent organisation, which is committed to Monmouthshire. This is also reflected in the Business Plan going forward.
- 4. REASONS:**
- 4.1 Under the Stock Transfer Agreement with the Council, MHA is required to seek approval from the Council in respect of the changes they wish to make.
- 5. RESOURCE IMPLICATIONS:**
- 5.1 There are no direct resource implications for the Council.
- 6. SUSTAINABLE DEVELOPMENT AND EQUALITY IMPLICATIONS:**

6.1 Positive implications have been identified. **See Appendix 4**

7. SAFEGUARDING & CORPORATE PARENTING IMPLICATIONS

7.1 No implications have been identified.

8. CONSULTEES: Cabinet; Senior Leadership Team; Senior Accountant Financial Control; Monitoring Officer and MHA.

9. BACKGROUND PAPERS:

Stock Transfer Agreement; 'Regulatory Framework for Housing Associations' and 'Sector Risks and Regulatory Expectation,' – Welsh Government, June 2017.

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Appendix 1

Extension of VAT Set-Off Agreement

- **Summary and Anticipated Expenditure Up to End of Current 10 Year Agreement**

Element	Estimated Value of Works – 10 Year Agreement	Estimated Spend to March 2018
Catch-up repairs	1,881,422	61,945,655
Programmed renewals	66,386,988	
Improvements	5,172,845	
Related Assets	2,522,523	
Asbestos Contingency	2,782,984	
Leaseholder Stock	630,633	
Non-Traditional Stock	8,059,982	5,028,000
Environmental	4,275,973	3,871,000
Garages	504,707	1,220,345
Total	92,217,866	72,065,000

- **Anticipated 5 Year Expenditure For Extended Period 2018-2022**

Element	Anticipated Expenditure 2018- 2022
Bathrooms	858,000
Communal	395,000
Electrics	919,000
External Works	3,245,000
Heating & Water	2,756,000
Kitchens	3,504,000
Roofs	2,990,000
Walls	2,017,000
Windows & Doors	502,000
Non-Traditional Stock	1,500,000
Related Assets	750,000
Asbestos Contingency	250,000
Environmental	405,000
Total	20,091,000

- **Further Background About Works Not Carried Out Under 10 Year Programme**

- **Tenants opting out of work.**

MHA have allowed tenants to opt out of work that doesn't have a significant health and safety risk. E.g. kitchens, bathrooms, additional socket outlets etc. Opting out of work has typically been taken up by tenants who felt they could either not put up with the disruption or were too unwell. Tenants have the option to opt back into work at any time if their circumstances change. Otherwise the work is done when the property is vacated.

- **Life expectancy of components.**

MHA have deferred the replacement of components that are still in good condition. For example, MHA have delayed carrying out unnecessary replacement of external wall rendering and wall pointing that has been programmed within the 10 years where we find it to be in good condition. MHA have also extended the lives of kitchens and bathrooms particularly in older person's accommodation where they have found to be in good condition.

The original stock condition survey did not take into account the interdependencies between component parts.

In addition to maximising the life expectancy of components MHA have programed their replacement to take into account the interdependencies between them. For example we have delayed the replacement of radiators and pipework to coincide with the next boiler replacement program.

- **Deferred the external maintenance program.**
Like most Large Scale Voluntary Transfers, MHA have prioritised resources on what has mattered most to tenants i.e. the WHQS work. In doing so MHA deferred carrying out significant external in curtilage works programs, i.e. walls, fences, gates and paths. Whilst MHA now have a large programme in progress these components will take another 5 years to complete.

Appendix 2

Re-Classification of Housing Associations

In September 2016 the Office of National Statistics (ONS) announced that they were re-classifying Housing Associations in Wales as public sector bodies. This would have a big impact on housing associations and Welsh Government primarily by impacting upon the ability to borrow from the private sector. This would have further implications for Welsh Government on seeking to achieve their target of developing 20,000 new homes.

In order to reverse this re-classification and ensure housing associations are classed as private sector again, the Welsh Government published a consultation document on proposed regulatory reform of registered social providers. This document mainly refers to the regulator's powers, but also makes proposals around the powers held by local authorities as follows:

- Introduce a new power to reduce Local Authority (LA) influence over RSLs in Wales. ONS has indicated the current arrangements, usually contractual between local authorities and, in most cases, Large Scale Voluntary Transfer RSLs, for reserved places on RSL Boards, and in some cases holding particular voting rights, including effectively powers of veto on matters including constitutional change, are indicators of control and therefore require reform. The policy proposal is to introduce powers to: limit reserved places for local authority appointees on any Welsh RSL Board to a maximum of 24% of the total number of Board members at any time;
- Remove local authority appointees before the end of their term and allow any necessary constitutional changes to be made;
- Remove any controlling voting or any other rights of consent which local authority appointees currently have including as Board members or shareholders;
- Remove any requirement for local authority appointees to be present to achieve a quorate meeting; and
- Remove any requirement for any other specific local authority consent separate to any voting rights. Any such provisions would override any existing rights for local authorities to nominate Board places whether arising through RSL rules or contracts.

Extracts of Relevance from Welsh Government Housing Regulation and Guidance Publications

- **The Regulatory Framework for Housing Associations Registered in Wales, June 2017**
 - *'The revised approach provides a focus on continuous improvement and a clear regulatory judgement. New performance standards place a stronger focus on decision making, leadership and financial viability aligned with the way effective organisations actually run their businesses.....'*
 - *'The new Framework recognises the autonomy and independence of Housing Association Boards with an increased focus on good governance.....'*
 - *'The purpose of the Regulatory Framework is to ensure that Housing Associations provide good quality homes and high quality and improving*

services to tenants and others who use their services. Welsh Ministers regulate by ensuring that each housing association is:

- *Well governed – led effectively and well managed by boards, executives, staff and works with tenants and partners to make and implement effective business decisions.*
- *Delivering high quality services.....*
- *Financially viable – has the money to meet current and future business commitments and effectively manages its finances’*

- **Sector Risks and Regulatory Expectation, June 2017**

‘Moving forward, regulatory focus will be on strategic risks and business viability issues - specifically on how the Board is assured that its primary responsibility of ensuring the effective running of the RSL is fully and properly discharged. The Board needs to understand the issues and risks it faces in delivering its own business plan.’

‘We are seeking assurance from each Board that risks faced in relation to governance including landlord services and financial viability are being identified and managed effectively.’

‘Governance and Landlord Services Risks

The key risks of in terms of governance and landlord services are outlined below:

- **Poor quality governance & leadership:** *The Regulator will be seeking assurance on the quality of the leadership of the Board and senior management team.....*
- **Inadequate understanding of the changing operating environment:** *Boards must be strategically effective in forward planning, scenario consideration and seeing the ‘bigger picture’ (the creative and innovative aspects of governance) and should be aware of the implications of the fast changing external environment.*
- **Poor quality risk management and stress testing.....**
- **Ineffective tenant involvement.....**
- **Lack of equality and diversity including Board diversity.....**

Boards must ensure they have the skills and knowledge to understand the diverse range of risks their organisations will be exposed to as a result of the increasingly complex nature of the transactions they enter into. Boards must be able to identify when and where there are skills gaps and ensure they have an appropriate strategy in place to access the relevant expertise.’

Board Skills & Capability

MHA operates in an increasingly changing and challenging environment – politically and financially. MHAs are committed to building new homes – which in itself brings about challenges and requires a level of experience and knowledge at senior management and Board level.

Due to Welfare Reform and the associated uncertainty that this is creating uncertain financial situation, MHAs wish need to find alternative forms of income to ensure that they continue to be viable businesses and are able to develop new homes. This requires the Board to have business skills and expertise.

With the uncertain financial environment, development and diversification, strong financial skills are key if Boards are to ensure housing associations remain viable and prosperous businesses.

Technological developments and enhancements mean that housing associations need to invest and explore new ways of delivering their services. This may require boards to have technical knowledge and experience. Housing Associations need to ensure that they are able to appoint board members who have the relevant skills for the business.

MHA recently went through a recruitment process for independent board members and the skills that are currently required on MHA Board are:

- property development,
- commercialism,
- change management,
- property asset management/maintenance,
- procurement and;
- sustainability initiatives
- I.T./Digital technology

At the last board away day it was agreed that additional skills were required, particularly around business and IT.

Appendix 3

Risk Overview – Monmouthshire Housing Proposed Rule Change August 2017

The following provides an on overview of risks to Housing & Communities, the wider Council and to Monmouthshire as a community/county in relation to Monmouthshire changing their

Risk Register					
Risk Description	Risk			Risk Mitigation & Potential Actions	Comment
	Impact	Likelihood	Priority		
The level of investment in the local housing stock may be reduced resulting in a decline in condition.	H	L	H	<p>MHA have a regulatory responsibility to continue to maintain the Welsh Housing Quality Standard and meet performance standards. The Regulatory Framework is designed to protect tenants and to ensure high quality services are delivered</p> <p>MHA are obliged to consult with tenants about potential management changes. Their governance structure provides the necessary opportunities including tenant board membership</p> <p>The needs of tenants are at the heart of the Regulatory Framework</p>	
MHA may pull out of the Homeseach Partnership eg the common housing register and common allocation policy	H	L	H	MHA would be obliged to implement a nominations agreement with the Council	MHA could make a decision to withdraw from the Partnership outside of any rule change

MHA may pull out of Public Service Board membership and PSB partnership involvement	M	L	M	MHA aren't statutory members.	MHA could make a decision to withdraw from the PSB outside of any rule change
MHA may cease to support MCC priorities eg homelessness	H	L	H	Ditto	Not supporting MCC's priorities would be detrimental to MHA's business sustainability and development
MHA may reduce their level of service to tenants	H	L	H	<p>MHA are legally obliged to consult with tenants about potential management changes. Their governance structure provides the necessary opportunities including tenant board membership</p> <p>MHA covenants to encourage the development of resident involvement.</p> <p>The needs of tenants are at the heart of the Regulatory Framework MCC should reflect MHA activity in the annual scrutiny programme</p>	MHA covenant for the benefit of each tenant that it will consult on any changes in matters of housing management.
MHA may refuse to develop affordable housing as required by the Council and in line with strategic priorities	H	L	L	<p>The Council could refuse to facilitate access to Social Housing Grant</p> <p>The Council would continue to work with Pobl and Melin Homes</p>	This would be detrimental to MHA's business development ambitions
MHA may refuse to provide a development role	M	L	L	The Council continues to have good development partnerships with Pobl and Melin Homes who would be happy to support	Ditto

				MCC maximise development delivery	
MHA may withdraw from Supporting People commissioned activity	L	L	L	<p>Contracts are in place that can be enforced through Commissioning arrangements and Supporting People funding can be withheld or clawed back</p> <p>Other providers are available who could step into backfill or replace MHA</p>	<p>Non-compliance with Supporting People contracts would be detrimental to MHA's business development and strategic influence</p>