

Wiltshire Council

Cabinet

15 September 2015

Subject: Establishment of a Wholly Owned Subsidiary (WOS) (Housing) repairs and maintenance, planned and investment works as well as client function.

**Cabinet member: Councillor Jonathon Seed
Housing, Libraries, Leisure and Flooding**

Key Decision: Yes

Executive Summary

The Councils (Housing) 'Responsive Repairs & Voids' contract has its first break clause at 31 March 2016.

The Housing team has reviewed the way in which its contracts are structured and delivered and, through a comprehensive review of the service, has concluded that from an efficiency and service delivery stance it would be better to re-procure its contracts over the next 2-3 years and deliver its Asset Management function in a different way.

To this end officers, residents, the Housing Board and several Members have been part of a comprehensive review of the different contractual arrangements that exist in the housing sector that would best suit the Council, its tenants and our wider stakeholders.

The review concluded that from all of the delivery models available the formation of a WOS would be the most beneficial to the Council.

Proposals

This paper is to seek the Cabinet's approval in principle for :-

1. The formation of a WOS to deliver the Council's (Housing) Responsive Repairs, Voids, and Planned Investment works, works to hostels, Gypsy & Traveller sites, including the client function role.
2. Approve advancing the procurement of a 'partnering contractor' that will manage the delivery of the Council's housing asset management function and housing maintenance client function
3. To agree to delegate the finalisation of the proposal to the Associate

Director for Adult Care, Safeguarding and Housing in consultation with the Cabinet Member for Housing, Leisure, Libraries and Flooding, Corporate Director with responsibility for Housing and the Section 151 and Monitoring Officers.

4. Proposals and final decision to be brought back to cabinet for determination.

Reason for Proposal

A WOS will deliver a more effective service, and address the key issue of the skills gap within this service area.

Maggie Rae
Corporate Director

Wiltshire Council

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Key Decision: Yes

Purpose of Report

1. To agree to the formation of a WOS that will deliver council house repairs and improvements and management, and other works which will deliver the council greater efficiencies and more cohesive services.

Relevance to the Council's Business Plan

2. The development of a WOS will support the following objectives or the Council's Corporate Business Plan;
 - a) Priority – Protect those who are most vulnerable
 - b) Key Action 6 – Invest to refurbish council housing and encourage the development of new affordable homes, including supported living in rural areas
 - c) Outcome 3 – Everyone in Wiltshire lives in a high quality environment
 - d) Outcome 4 – Wiltshire has inclusive communities where everyone can achieve their potential
 - e) Outcome 5 – People in Wiltshire have healthy, active and high quality lives
 - f) Outcome 6 – People are protected from harm and feel safe.

Main Considerations for the Council

3. The Options Paper attached to this report has been discussed and agreed with the Council's Cabinet Member for Housing, Libraries, Leisure and Flooding, and with the Housing and Procurement Boards.
4. A WOS meets the needs/risks identified during the options review, it also supports the council's corporate plan.
5. During the review four key strategic and operational requirements and issues were raised which support the proposal;
 - Lack of internal skills to manage an efficient and effective repairs service

- Need to have a performance managed service
 - Being able to develop and use the existing Direct Labour Organisation (DLO)
 - Developing a flexible model that would be able to be expanded in the future to deliver more than just responsive repairs, but also planned, cyclical works, FM works and smaller new build projects if required, as well as being able to work across the council in a more joined up manner.
6. The cost of delivering repairs through a WOS will be held within the existing Housing Revenue Account (HRA) budget. It is envisaged that as well as delivering improved performance the WOS should be able to generate savings in this budget.
 7. The service will see a different approach to responsive repairs with a shift towards greater emphasis on proactive repairs identified through a planned yearly inspection regime, where a more comprehensive list of repairs is collected. These can then be managed in a controlled way, rather than the reactive approach used currently. This model will achieve financial savings as well as a better tenant experience, in that repairs are carried out in fewer visits, meaning less disturbance and inconvenience. The other benefit of annual inspections is that repairs that may not have been reported or reported late, which lead to further damage to assets, will be avoided.
 8. Working to this model is more cost effective as planned repairs are less costly and makes the ratio of responsive repairs to planned repairs more aligned to sector targets. (Recent feedback from an organisation adopting this model is predicted to see an 8% reduction in responsive repair costs.)

Background

9. The council's responsive repairs and void property works are currently carried out through an external contract, (which has been let on a 3 year plus 1 + 1 contract, with the first break clause at 31March 2016), and the Council's own DLO. The annual budget for responsive repairs and voids is £ 3.5 million.
10. Consideration as to the way in which the responsive repairs service has been historically delivered has been the subject of assessment over the past twelve months and covered;
 - A review of all other service delivery models that are available,
 - The need to provide a better service to deliver our responsive repairs, and the repairs service as a whole
 - To ensure any proposed changes to the way the service operates is compliant with all Wiltshire Council's legal and internal policies.
 - To ensure the correct processes for any changes are followed in the correct order.
11. To this end an in depth review has taken place, which involved all relevant stakeholders, including the Housing Board, Members, Tenants (through a detailed questionnaire), specific conversations with local and national housing organisations as well as housing experts and advisors.

12. The review process looked at the top six delivery models being used in the housing sector. Through discussion and inclusion of relevant stakeholders, two were discounted, and the remaining four subjected to a more in depth review as well as SWOT analysis and Risk Assessments on each.

Models Reviewed

Option	Model	View
A	Expand existing (DLO)	Pursue in more detail
B	Create WOS	Pursue in more detail
C	Create 'Managed Service' model by external provider	Pursue in more detail
D	Outsource to external provider	Pursue in more detail
E	Create Joint venture with External provider	Discard – If this type of model is to be considered the WOS would be of less risk
F	Develop Cost Sharing Group with another organisation	Discard – Following conversation Local RSL. See below.

13. As part of the evaluation process there was engagement with local Registered Providers (RP's), to establish how they were delivering their repair service now and what their plans were for the future.

14. Two of the larger RPs indicated that they were not in a position to consider our requirements at present. One other RP discussed their present arrangements and were open in their comments and thoughts. They developed a WOS 12 months ago and intend to start rolling out planned and works maintenance this summer through the WOS. They have put their customer contact staff into the WOS and share office space with the parent company, this has helped with communication and joined up working and thinking.

15. The conclusion was that although there were synergies in the direction of travel and thinking, this RP was not far enough advanced to link up with, though it did consolidate our thinking of a WOS being the right model for the Council to pursue.

Conclusion

16. It was evident through the process that the existing delivery model needed to be changed. The preferred model that can deliver the best mix of the key requirements, established at the outset of the review, is a WOS, a bespoke company that not only will be commercially aware but also have the Council's key drivers at its centre.

17. This option not only will enhance service delivery, but also address the recruitment and retention of skilled workforce.

Safeguarding Implications

18. The WOS will need to link into the Council's safeguarding procedures, this will be more controllable than with some of the other models reviewed.

Public Health Implications

19. The provision of a good quality repairs service and well maintained homes will assist in maintaining residents' health.

Corporate Procurement Implications

20. The Council will be looking to procure a 'partnering contractor' that will manage the delivery of the Council's housing asset management function and housing maintenance client function. The contract will be for 15 years with two 5 year break clauses (plus normal break clauses for non-performance).
21. The Contract will initially be managed as a service which has a budget in the region of £3.5 million per annum. This will be followed, at a date to be agreed providing that performance is delivered by the contractor, by the planned and cyclical works (replacement kitchens, bathrooms, doors, roofs, gas servicing, painting etc) which has a budget of approximately £10 million per annum.
22. The Council will require external procurement and legal support to take forward the WOS model. The WOS model is relatively new so there is limited external procurement and legal support who have previously worked on WOS models. The procurement advice will cost in the region of £60k plus VAT and the legal support will be in the region of £30k plus VAT> It is anticipated that these will be secured through existing framework agreements..
23. The setting up of the WOS has been agreed in principle by the Corporate Procurement Board as an appropriate delivery model for this service.

Equalities Impact

24. The formation of a WOS and the changes to the way we deliver responsive repairs will support the thinking that well maintained homes contribute to overall health and wellbeing of tenants and that secure, safe and stable accommodation can enable households to contribute positively to their communities.
25. Equality impacts will be monitored as the project progresses. This is to ensure that the Council's statutory commitments to promoting equality and inclusion and tackling inequality are maintained. The delivery of an effective and efficient repairs service will also support the delivery of the council's vision to create stronger and more resilient communities

Environmental and Climate Change Considerations

26. Specifications and the way future repairs are delivered will support Environmental and Climate Change. For example specifications processes will

be written and aligned to ensure longevity in materials and products used, fewer visits and hence lower carbon foot print. A full impact assessment will be developed early in the project.

Risk Assessment

27. The risks that may arise are detailed below, along with actions that will be taken to mitigate them.

	Risk	Mitigating Action
a)	Insufficient resources to deliver the project	An internal project team has been developed including a proposed 'Project Board' which will oversee the project / procurement process. There will be the need to use external expert support around the legal set up of the WOS, this has been discussed with the legal team.
b)	Insufficient Backing for a Wholly Owned Subsidiary	The formation of a WOS needs 'buy in' from the top down, as this will be a significant change to the council, consultation with Legal, Procurement, and Finance teams has been crucial, yet further work with other teams, and officers will be required. The Project Board will monitor this.
c)	Scepticism for change	It is important that we ensure the project is given the necessary level of importance and support corporately, and that the changes in working practices are communicated in a structured and clear way. A detailed communications plan will form part of the procurement strategy documents
d)	Meeting delivery timescales	The procurement of this project will have to be closely monitored. The break clause in the existing repairs contract is 31March 2016, we can extend by a short period if required, but the concern will be that the longer the process takes the greater the risk of a drop off of service levels with the existing contractors with the resulting adverse affect on our tenants. The Project Board will monitor this.
e)	Adaptability of ICT Systems	Without question, one of the key ingredients of any new forward thinking repairs service is the IT system. A clear understanding or the WOS IT requirements will be required during the development of the tender documents to ensure, integration at mobilisation does not become a problem.

Risks if the proposed decision is not taken.

28. Council will be left with existing housing repairs and maintenance contracts which will have to be extended.

Financial Implications

29. The budget for repairs and maintenance forms part of the 30 year business plan which is regularly reviewed and updated in line with corporate priorities for housing and future financial projections. The breakdown of costs for the responsive & cyclical budget for 2014/15 was as follows:

Service	Budget	Actual	Variance
Handy person Service	18,000	7,899	(10,101)
Housing Repairs Contracts	998,000	1,277,609	279,609
Void Repairs – Contractors	2,158,200	1,071,281	(1,086,919)
Housing Maintenance Trading Account	839,200	683,849	(155,351)
Housing Repairs – Contractors	1,485,500	2,657,909	1,172,409
Total	5,498,900	5,698,546	199,646

30. The first area we have assessed is whether the WOS option provides better value for money (VFM). The Council has 5,439 properties that require cyclical repairs and maintenance and on average the Council is budgeting to incur £425.76 of cost per property each year. These figures are exclusive of the external contracts that support the planned repairs and maintenance, which if added mean a spend of just over £700 per property. However, it is understood that gas and electricity would not form part of the WOS arrangement.
31. The level of spend is dependent of course on the condition of the housing stock. This makes comparison with other organisations difficult, as different places will face different issues dependent on their business plan and updating of their repair and maintenance over the last few years. An analysis of the repairs history for the same period within housing associations and arms length management organisations (ALMOs) that have introduced a WOS model shows a sector average cost of £356.53, with average costs per property ranging from £238 to £402. It should be noted that in these cases it is not uncommon for there to have been significant investment in the stock prior to transfer, and as such the repairs programme could be significantly less.
32. The voids service is very different in that Wiltshire Council is significantly cheaper per property than the sector average and also the comparator authorities. The average cost for void repairs was £1,357 against the average of £1,965 amongst the other authorities. Again this can be influenced by several local circumstances – from turnaround time to the state of the property on vacation, and its age.
33. However, to conclude on whether the WOS option offers VFM prima facie we are of the view that the comparative costs are interesting and would suggest that there is merit to explore further why Wiltshire Council's DLO is more expensive for repairs and maintenance when compared and the level of scope for savings through a more efficient means of managing the service. If costs were reduced to the sector average it would result in an efficiency of £0.377m per annum. Efficiencies can be made by reducing the number of visits to properties and implementing a one visit service for cyclical repairs, and more efficient finance models to manage responsive repairs.

34. The next area we have assessed is the overall budget envelope and the Council's position on the maintenance of its housing stock during any WOS contract / operation. The HRA is made up of a balance of both revenue and capital costs which form part of a 30 year business plan outlining the proposed investment in housing during this period. The two are intrinsically linked and any decisions affecting spending on the HRA should not be made in isolation. Therefore, when considering decisions around setting up a WOS it should be done with thought to the whole HRA business plan and not just the repairs and maintenance service. At present the Council is developing a new build programme that is partly funded from the HRA and projections of rental income. Should that scheme overspend or not fully recover costs from rental income then there is a significant risk that the deficit falling to the HRA could only be made up from a reduction in the repairs and maintenance spend. This would thus have a significant impact on the programmes of work and structure of delivery contained in this report. At this stage it is not possible to quantify that level of risk and mitigation strategies are developing alongside the scheme. However, recent examples of external factors such as the Chancellor of the Exchequer's recent announcement on rent reductions and Welfare Reform show how sensitive the funding for the HRA can be. As such the Council should consider all aspects of HRA in the level of any tender presented to market to ensure that the 30 year business plan remains affordable. That work must be completed before the tender is issued. If there are any shortfalls or conflicts then the in principle decision on a WOS should be re-examined by Cabinet to ensure it still provides value for money.
35. Finally we have assessed the VAT implications. These are varied and complex and the implications relate to the structure of the WOS. For example a WOS will not benefit from section 33 of the VAT Act so will only be able to recover input VAT where this relates to its taxable supplies. The repair and maintenance of houses is taxable and therefore it is likely that the WOS will be fully taxable and charge VAT to the Council as appropriate. However, if the contract with the WOS relates only to HRA properties, which the Council treats as non-business, the VAT on the subsidiaries fees will be recoverable in full by the Council without impacting on its partial exemption calculation. If there are any commercial properties such as estate shops there will be a small impact on the partial exemption calculation where repairs are carried out by the new Subsidiary (with VAT incurred on the labour as well as goods) rather than in-house where VAT would have only been incurred on the goods purchased. Alternatively, if the staff will continue to be employed by the Council but will be working for the new subsidiary, this suggests that the Council will be making a supply of staff to it and must charge VAT on the consideration received and it is then for the Subsidiary to recover this VAT. For the VAT to be charged correctly it would be advisable for the consideration for the supply of staff to be clearly identified within the agreements (i.e. not hidden as an offset against fees charged).
36. The new VAT arrangements for housing repairs and maintenance will depend on the final contractual and legal arrangements. This will need to be clearly set out and the invoicing arrangements agreed with HMRC in advance. Based on current proposed structure it is not anticipated this will be an issue, however this must be resolved before any procurement process is(?) advanced.

37. Overall in principle our work alongside Housing's suggest that there is scope to explore a housing repairs and maintenance WOS, although further work is required to ensure that both the overall envelope and ways of operating are clarified. All of this must be done via the revised 30 year Housing Business Plan which is due to be completed shortly. If when this further work is completed it significantly revises the financial assessment and would suggest that the WOS is either uneconomical and / or it would result in standards being reduced it is suggested that the decision to move forward would need to come back to Cabinet to reconsider based on the new information.

Human Resource Implications

38. Throughout the process TUPE arrangements will be followed, and any affected staff from within the Council will be transferred to the WOS when it is established. The same is true for staff currently employed by the contractor within the TUPE rules.
39. All trade union and staff consultations will be followed throughout the establishment of the WOS

Legal Implications

40. The Council has the power to establish a WOS, derived from the General Power of Competence (Localism Act 2011) and to the extent the WOS is a "trading company" (that is has customers other than the Council and seeks to make a profit) then the power derives from section 95 Local Government Act 2003. Whatever level of trading is contemplated that activity can only be carried out by a company within the meaning of the LOCAL Government and Housing Act 1989. Therefore the form of the company must be one of: a company limited by shares; a company limited by guarantee; an unlimited company; or an industrial and provident society.
41. In the event that the WOS is created and becomes a functioning body then, strictly speaking, in having the WOS perform its repairs service the Council will be procuring services from the WOS. As the WOS will be a separate entity to the Council and because of the value of the repair works the procuring of services from the WOS will be regulated by the Public Contract Regulations 2015 ("PCR 15").
42. PCR 15 is helpful to the Council's proposal. Even though regulated by PCR 15 the arrangement described in this report falls into an "exemption", the consequence of which is that no procurement exercise is required and the Council can deal directly with the WOS without any risk of procurement challenge.
43. The Council and WOS will remain in this harbour safe from challenge while the following conditions are met:

- i) The WOS remains just that – wholly owned by the Council (or by a consortium of local authorities). 100% of the shareholding of the WOS is in the hands of LAs.
 - ii) The Council (or the consortium of LAs) exercises over the WOS strong management control – e.g. directors of WOS should be senior officers of the Council or its Councillors.
 - iii) At least 80% of the services provided by the WOS are provided to the Council (or LAs); that is to say the WOS can do business elsewhere but not more than 20% of its turnover is with others.
44. If any one or more of these conditions are not met then the exemption is lost and dealing directly (that is to say without tendering for the repair services) with WOS will allow other organisations to challenge the WOS – Council relationship.
45. Despite the constraints in i) to iii) above the WOS will be a separate legal entity. It will be required by Company Law to submit accounts (although it may be able to take advantage of the small company provision and avoid having to provide an auditors' report) and pay corporation tax and VAT. In order that it be properly assessed to tax the WOS' accounts must give "a true and fair view" of the state of the WOS and to enable this the true costs of running the WOS must be established. Costs easily identifiable will be wages and materials. Other costs will be less easy to identify will be those for items provided by the Council, for instance IT services, rent for property provided by the Council or shared with the Council, "consultancy" advice provided by the Council by way of central services such as procurement/finance advice.

James Cawley
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Appendix

Options Paper

Background Papers

None