

		Report to: Northwards Housing Board Tuesday 11 May 2010		Item No: <h1>9d</h1>	
Title:		Rule Changes			
Date:		29 April 2010			
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Confidential:					
For: (Please tick action required)		NOTING	DISCUSSION	APPROVAL ✓	
PURPOSE OF REPORT					
RECOMMENDATION					
It is recommended that the Board approve these suggested rule changes subject to Council agreement and adoption at Northwards AGM by special resolution on 14 October 2010.					
IMPLICATIONS					
Equality & Diversity:					
Financial:					
Staffing:					
Decency Target:					
Governance:					
Risk Assessment:					

Equality Impact Assessment	
When a new policy, procedure or initiative is being submitted for approval an Equality Impact Assessment must have been completed. Please give details below.	
Function being assessed	N/A
Section	
Date of assessment	
Person Responsible for assessment	
Is this a new or existing policy?	
If there are significant implications in terms of equality please append a summary report.	

Consultation/Consideration:

	Yes, No or N/A:	Name:	Date:
Sub-Committee:			
Area Panel:			
Task Groups:			
Ward Councillors:			

Introduction

All changes must be agreed by the Council and must be adopted at Northwards AGM by special resolution on 14 October 2010.

Throughout this document Pannone’s recommendation are detailed in red and blue as appropriate.

A full copy of Northwards rules is available on Sharepoint and on Northwards website.

1. Casual Vacancies

Board received a report in January regarding the current rules which are out of date as they include reference to the “Tenants Federation”. This referred to Manchester Residents Association (MRA) which has been wound up.

Stephen Brown and Diane Roberts met with solicitors Pannone to discuss this and ask for their recommended rewording of this paragraph.

As agreed the Area Panels have been consulted regarding their replacing the “Tenants Federation”. They have confirmed that they are content to act in this way. A protocol for the process of appointing Casual Tenant Board Members will be agreed with Area Panels in due course.

Below are the changes Pannone have proposed to the articles of Northwards in respect of the appointment of tenant board members at article 17(1).

CASUAL VACANCIES

(1) Subject to Article 13 and to the following provisions of this Article, the Board may appoint a person who is willing to act to be a Board Member to fill a vacancy. The Board may only fill vacancies occurring among Council Board Members where the Council Member shall have failed within three months of a written request by the Organisation to make the appropriate appointments pursuant to Article 14(1). The Board may only fill vacancies occurring among Tenant Board Members ~~[where the Tenants’ Federation shall~~ Local Area Panels in existence at that time have failed within three months of a written request by the Organisation to make a nomination to fill such a vacancy]. A Board Member appointed under this Article 17(1) shall hold office only until the next following annual general meeting. If not re-appointed at such annual general meeting he shall vacate office at the conclusion thereof.

Pannone have also suggested some general tidying up of the rogue numbering in articles 13-15 as well as the references to “Company” rather than “Organisation” in article 11.

Recommendation 1

It is recommended that the Board approve these suggested rule changes subject to Council agreement and adoption at Northwards AGM by special resolution on 14 October 2010.

2. Compliance with Companies Act 2006

At this meeting with Pannone some other aspects of the rules were discussed which may need updating and officers asked that Pannone report their recommendations for Board consideration.

We confirmed to Pannone that the Board had reviewed the Companies Act 2006 and that they did not wish to fundamentally review the rules in light of those changes where it was not a necessary change.

Pannone have identified two potential issues in the current articles, relating to conflicts of interest and indemnities, that they think the Board should consider. It is considered that these articles are outside the 2006 Act.

Conflicts of Interest

Due to the 2006 Act, each Board Member now has a duty to avoid situations where his duty to Northwards may be in conflict with any other duties or interests he may have. There is personal liability for Board Member if he does not avoid situations of possible conflict of interest. However, there will be no breach of the new duty where the conflict situation has been authorised in advance by either the unconflicted Board Members or by the Council (as sole member). Such authorisation is now commonly found in the articles of association.

The remit of the authorisation can differ greatly and depends heavily on the stance of the company in question and the interests of its directors. On the one hand such authorisation may permit conflicted Board Members to personally exploit any property, information or opportunity of Northwards. On the other it may be more restrictive and may simply authorise a conflict of interests arising from a duty of loyalty owed by a Board Member to another organisation, provided that there is no benefit received by the Board Member in question. This latter provision tends to be favoured by charitable companies, where benefits to Board Members are generally prohibited.

Please note that this duty is not to be confused with the duty on directors to disclose any interests they may have in a particular transaction or arrangement with the company. This is a separate duty that is already dealt with in article 29.

Below are the relevant articles:

1. Any Board Member having an interest in any arrangement between the Organisation and another person or body shall disclose that interest to the meeting before the matter is discussed by the Board or committee of the Board. Unless the interest is of the type specified in Articles 29(2) or 29(3) the Board Member

concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or committee of the Board. Unless permitted by Articles 29(2) or 29(3) the Board Member concerned may not vote on the matter in question, but no decision of the Board or any committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.

- (2) Provided the interest has been properly disclosed pursuant to Article 29(1) a Board Member may remain present during the discussion and may vote on the matter under discussion where the interest arises because:
 - (a) the Board Member is a Tenant, so long as the matter in question affects all or a substantial group of Tenants; or
 - (b) the Board Member is a director or other officer of a company or body which is a parent, subsidiary or associate of the Organisation; or
 - (c) the Board Member is an official or elected member of any statutory body.
 - (3) A Board Member shall not be treated as having an interest:
 - (a) of which the Board Member has no knowledge and of which it is unreasonable to expect him to have knowledge;
 - (b) in the establishment of a policy in respect of Board Member expenses payable pursuant to Article 24.
2. If a question arises at a meeting of the Board or of a committee of the Board as to the right of a Board Member to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any Board Member other than himself shall be final and conclusive.
3. (1) At the first Board Meeting following each annual general meeting the Board Members shall appoint one of their number to be the chairman of the Board to hold office until the next annual general meeting and may at any time remove him from that office.
- (2) Unless he is unwilling to do so, the Board Member so appointed shall preside at every meeting of the Board at which he is present. But if there is no Board Member holding that office, or if the Board Member holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Board Members present may appoint one of their number to be chairman of the meeting.
- (3) The Board may appoint a vice or deputy chairman to act in the absence of the Chairman on such terms as the Board shall think fit.

All acts done by a meeting of the Board, or of a committee of the Board or by a person acting as a Board Member shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Board Member or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Board Member and had

Indemnities and insurance (article 42)

We are slightly confused about article 42, which deals with indemnifying and/or insuring Board Members or other officers against any losses or liabilities they incur. Both subsections of article 42 refer to s310 of the Companies Act 1985, which not only has been long since repealed, but more importantly that section refers to losses incurred by officers in their capacity as auditors of the Company, rather than losses incurred whilst they were carrying out their general duties (which was instead covered in s309A-C of the 1985 Act and is a far more common reference in articles of association). We are not sure whether this was a typo or whether it was intentional but we would recommend that if any of the directors also act as auditors we should update this article; at best it is confusing and at worst it may leave Board Members potentially exposed to personal liability that they previously thought they were protected from.

We do not appoint Board Members as auditors. However, this rule is outdated and therefore it is sensible to consider this change.

If the Board consider that any such provisions as above will be useful to the operation of Northwards, Pannone can be instructed to prepare appropriate wording.

The relevant articles are detailed below for reference.

INDEMNITY

4. (1) Every Board Member or other officer of the Organisation shall be indemnify out of the assets of the Organisation against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 727 of the Act in which relief is granted to him and no Board Member or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Organisation in the execution of the duties of his office or in relation thereto PROVIDED THAT this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
- (2) The Board shall have power to purchase and maintain for any Board Member or officer of the Organisation insurance against any such liability as is referred to in Section 310(1) of the Act.

Recommendation 2

If the Board consider that the rule changes suggested are required Pannone should be instructed to prepare appropriate wording for the Board's consideration. It is further recommended that the Board ask officers to clarify the indemnity rule with the Council's solicitors and report back to the Board.

3. Objectives and Powers

Pannone have also asked the Board to consider expanding the scope of Northwards' objects/powers at some stage.

The Board should consider whether Northwards is, or is likely to shortly be, carrying out:

- Services for any party other than (itself or) the Council;
- Services or activities outside areas where the Council own or manage housing stock;
- Any services or activities which are not within the current objects/powers (see attached for some possible areas); and
- Any collaboration with any other person, company or organisation (including other ALMOs).

If any of these things are or will be occurring, the Board need to be mindful of Pannone's advice on ultra vires acts and to consider whether it is appropriate to update the company's powers and objects to address these matters at this stage.

Northwards are currently providing services to other Registered Providers, our Health and Safety Team provide CDM consultancy which is approved through the Management Agreement. We also allocate properties and this is not reflected in the rules. As this not consistent with the articles below, Pannone have advised that it may be considered that Northwards are acting ultra vires.

This suggests that the Board should consider updating the rules that refer to the provision of our services to ensure that we are not acting ultra vires. The proposed changes would also give Northwards wider opportunities to develop more areas of business in a broader geographical area.

However, the management agreement does restrict Northwards to carrying out work only for the Council unless we are given explicit permission, other than CDM services. (Section 24.2). We would need to negotiate changes to the Management Agreement to make these rule changes, or else ensure that the rule changes include reference to the requirement to seek the Council's prior permission..

Pannone have provided the following synopsis of rules that would require change to provide Northwards with this flexibility. Pannone remarks are highlighted in red, and the current rule is in black.

Objects

- **All of the Objects are restricted to areas where the Council own or manage housing stock. Consider if you wish to try to remove this restriction so as to allow the Company greater room to manoeuvre.**
- **Many of the Objects are restricted to services provided to or for the Council, or in respect of housing stock owned or managed by the Council. See for example sub-clauses 3(1), (2), (3), (7) and (10). Consider expanding such Objects, where appropriate, to include not just the Council but "any other person, company or organisation". You may need to check that the management agreement already prohibits the provision of services to other parties without the Council's prior consent.**
- **Clause 3(2) – there is no explicit power to "repair" or "develop" the housing stock managed by the Council.**
provide amenities and services of any description for residents of housing stock owned or managed by Manchester City Council from time to time either exclusively or together with persons who are not residents of such housing stock;

- Clause 3(3) – there is no ability to provide consultancy work to, for example, social landlords.
provide advice and assistance to all tenants, leaseholders, and licensees, of Manchester City Council and applicants for housing and applicants for housing advice in respect of local authority housing;
- Clause 3(4) – all of the provisions of 3(4) are restricted to “the area of Manchester”. Consider expanding this to include “such other area(s) as may from time to time be agreed by the Council”.
carry out any activity which contributes to the regeneration or development in the area of Manchester (within the meaning of Section 126 of the Housing Grants Construction and Regeneration Act 1996) including but not limited to:-
- Clause 3(4)(f) – consider expanding to include “employment and employment opportunities”.
providing employment for local people;
- Clause 3(4)(i) – consider expanding to include other issues such as age, gender, race, nationality, ethnic, origin, religion or sexual orientation.
meeting the special needs of local people which arise because of disability or because of their sex or the racial group to which they belong.
- Clause 3(5) – consider expanding to include “housing to be kept available for letting, for sale or as hostels”.
provide, construct, improve or manage housing to be kept available for letting or hostels;
- Clause 3(8) – consider expanding to include the allocation of dwellings on behalf of the Council (if appropriate).
assess applicants for housing assistance;

We do already allocate dwellings on behalf of the Council and always have therefore this object should be changed to reflect this:

“assess applicants for housing assistance and undertake the allocation of dwellings on behalf of the Council (if appropriate) “

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- The following additional Objects could also be considered with or without expanding them to parties other than the Council:
 - promote tenant and leaseholder participation and community empowerment in housing management and major investment through a range of democratic, participatory and estate-based approaches; and
 - promote community cohesion in the [Council’s] area.

Powers

- Note that the Company’s powers are restricted to those necessary or expedient to further its Objects.

- **Clause 5(2) – if relevant consider expanding so as to enable the Company to contract not just with the Council but also with “any other person, company or organisation” (again consider with or without the Council’s consent).**
contract with the Council Member in furtherance of its objects
- **Clause 5(4) – if relevant consider expanding so as to include insurance protection of those who use premises owned or used by, or let or leased to the Council and further allow for such premiums to be paid out of income or capital. You may also wish to specifically exclude insurance for the costs of an unsuccessful defence to a criminal prosecution brought against a Board member in his capacity as Board member.**
insure and arrange insurance cover for the Organisation from and against all such risks as the Board may think fit and to pay any premium in respect of such insurance;
- **Clause 5(6) – if relevant consider expanding so as to permit the delegation of power to an investment manager to buy and sell investments for the Company in accordance with any investment policy. You may also wish to include a power that allows the incorporation of a nominee entity which would hold investments of the Company or income from those investments.**
invest any monies of the Organisation not immediately required for the furtherance of its objects as it determines and as permitted by law;
- **Clause 5(7) – if relevant consider expanding so that the Company has the ability to dispose of its interests in any such subsidiaries.**
subject to such consents as may be required by law and compliance with all formal guidance issued by the Organisation’s regulators (if any) to purchase or otherwise acquire or to encourage or promote and in any way support or aid the establishment and development of any subsidiary, or any other body established for the purposes of carrying on any trade or business either for the purpose of raising funds for the Organisation or for the furtherance of the objects of the Organisation;

Recommendation 3

It is recommended that the Board consider the solicitors advice and if accepted instruct Pannone to draft appropriate wording for further consideration. If the Board wish to adopt these changes they should be mindful that the rules will need to be written to comply with our Management Agreement.

4. Recommendations

This document has been prepared with individual recommendations for each section for clarity.

The recommendations are detailed below:

Recommendation Summary

The Board are requested to approve the following three recommendations:

Recommendation 1

that the Board approve these suggested rule changes subject to Council agreement and adoption at Northwards AGM by special resolution on 14 October 2010.

Recommendation 2

that if the Board consider that the rule changes suggested are required Pannone should be instructed to prepare appropriate wording for the Board's consideration. It is further recommended that the Board ask officers to clarify the indemnity rule with the Council solicitors and report back to the Board.

Recommendation 3

that the Board consider the solicitors advice and if accepted instruct Pannone to draft appropriate wording for further consideration. If the Board wish to adopt these changes they should be mindful that the rules will need to be written to comply with our Management Agreement.